

No. 2908

2905

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY, Plaintiffs,

Appellants

vs.

CLALLAM COUNTY, a Municipal Corporation, and
HERBERT H. WOOD, Treasurer, Defendants,

Appellees

RECORD ON APPEAL

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

Filed

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No. 57

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION
IN EQUITY—NO. 57

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTHY,
Plaintiffs,

vs.
CLALLAM COUNTY, a municipal
corporation and Herbert H. Wood,
Treasurer,

Defendants.

NAMES AND ADDRESSES OF COUNSEL:

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Port Angeles, Washington.

RICHARD SAXE JONES, ESQ.,
Solicitor for Defendants,
627 Colman Building, Seattle, Washington.

STATEMENT

Time of commencement of suit, March 6, 1916.

Names of parties to suit: Charles H. Ruddock and Timothy H. McCarthy, plaintiffs and appellants; Clallam County, a municipal corporation, and Herbert H. Wood, Treasurer, defendants and appellees.

Dates of filing respective pleadings:

Plaintiffs' bill of complaint filed March 6, 1915.

Defendants' motion to dismiss filed March 26, 1915.

Order denying defendants' motion to dismiss filed March 29, 1915.

Defendants' answer to complaint filed May 3, 1915.

Stipulation of parties with reference to amended answer, filed November 6, 1916.

On September 1, 1915, before the Hon. E. E. Cushman, Judge, this cause in conjunction with Equity Cause No. 36, entitled Clallam Lumber Company, a corporation, plaintiff, vs. Clallam County, a municipal corporation, and Clifford L. Babcock, Treasurer, defendants; Equity Cause No. 37, entitled Charles H. Ruddock and Timothy H. McCarthy, plaintiffs, vs. Clallam County, a municipal corporation, and Clifford L. Babcock, Treasurer, defendants, and Equity Cause No. 56, entitled Clallam Lumber Company, plaintiff, vs. Clallam County, a municipal corporation, and Herbert H. Wood, Treasurer, defendants, the same being consolidated for trial, were tried upon the testimony of witnesses produced before the court, and upon exhibits offered in evidence by the respective parties, which have been returned and filed herein, and upon the depositions taken under stipulation of the parties and exhibits annexed thereto.

Counsel for the respective parties appeared and argued said cause in open court and thereafter submitted written briefs to said court.

Thereafter, on January 22, 1916, the Judge before whom said causes were tried and heard made and filed his memorandum decision.

Decree was made, entered and filed in said cause on February 3, 1916.

Plaintiffs made and filed petition for rehearing March 3, 1916.

Argument had on petition to rehear before Hon. E. E. Cushman, Judge, and taken under advisement by him April 18, 1916.

Memorandum decision on petition to rehear rendered and filed by Hon. E. E. Cushman, Judge, on May 11, 1916.

Final order denying petition for rehearing made and filed May 15, 1916.

Journal entry of said court adjourning the November term and opening the May term of court May 2, 1916.

Assignment of errors, petition for appeal, allowance of appeal, bond on appeal with approval thereof, filed October 27, 1916.

Citation on appeal issued served and filed October 27, 1916.

Statement of Facts Certified by Judge. Filed Oct. 27, 1916.

Order of Court, E. E. Cushman, Judge, enlarging time to docket case on appeal and return of citation made and entered Nov. 2, 1916.

Order of Judge of U. S. Circuit Court of Appeals, Ninth Circuit, on stipulation of parties that this cause be heard on Statement of Facts Printed in Cause Clallam Lumber Co. vs. Clallam County, on appeal to this same term made Dec. 12, 1916.

IN EQUITY—NO. 57

BILL OF COMPLAINT

TO THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION, SITTING IN EQUITY:

The plaintiffs Charles H. Ruddock and Timothy H. McCarthy, bring this their Bill of Complaint against Clallam County, a municipal corporation, and Herbert H. Wood, Treasurer of said county, and humbly

complaining, respectfully show your Honor as follows:

I

The plaintiff Charles H. Ruddock is a resident, a citizen and an inhabitant of the City of New York, State of New York, and the plaintiff Timothy H. McCarthy is a citizen, a resident and an inhabitant of the city of New Orleans, Louisiana.

II

That at all the times herein mentioned, the defendant County of Clallam, was and now is a county of the state of Washington, situate in the Northern Division of the Western District thereof, and as such a municipal corporation under the constitution and laws of said state and a citizen of the state of Washington.

III

The defendants Herbert H. Wood now is, and ever since the 11th day of January, 1915, has been the duly elected, qualified and acting Treasurer of said County of Clallam, and a citizen of said State of Washington, and a resident and inhabitant of Clallam County, in the Northern Division of the Western District thereof.

IV

The matter of controversy in this suit exceeds, exclusive of interest and costs, the sum of Three Thousand (\$3000) Dollars, and is to wit: approximately the sum of Seven Thousand (\$7000) Dollars and over.

V

The plaintiffs are the owners of certain timber lands situate in said Clallam County, a list of which containing the correct description thereof, is hereto attached and marked Exhibit "A" and made a part hereof. The said lands contain in the aggregate 7941.06 acres of land, according to the Government survey, more or less. These plaintiffs have been the owners of said lands for four years or thereabouts, last past, and more. Said lands constitute substantially a solid body lying in the interior of Clallam County along the valleys of the Solduc and Calawa Rivers.

VI

For the purpose of assessment for taxation and as a basis thereof, the assessing officers of Clallam County

have from time to time, during the last five or six years, caused timber lands in said county to be cruised, and the cruises and estimates thus made to be adopted by the county. Most of the timber lands in the county owned by private parties, as distinguished from the government lands, have now been cruised, and all of the lands owned by these plaintiffs have been so cruised, and so far as respects timber lands within the county, upon which cruises have thus been made, it is claimed by the assessing officers that the same have been assessed upon the basis of the cruises thus obtained. The assessments made by the assessing officers of the county have been made, however, according to certain zones or districts which the assessing officers have arbitrarily, unreasonably and unlawfully laid off and determined without reference to and in disregard of the true or fair value in money of timber on the lands within such zones or districts respectively.

VII

One of these zones thus arbitrarily laid out abuts immediately upon the Straits of Fuca and extends east and west along the Straits for a distance of approximately 35 miles, and extends back from the Straits into the interior distances varying approximately from three to eight miles. Within this zone are included those timber lands which, of all timber lands within the county, are of the greatest value, not merely because the timber thereon is of excellent quality, but particularly because of the location thereof, the same being situated immediately upon tidewater or adjacent thereto, and thus rendered immediately accessible to the markets of the world. Within this zone the timber is valued for the year 1914 by the assessing officers of Clallam County, as follows: Fir, spruce and cedar at 90c per thousand feet; hemlock at 40c per thousand feet. In this and all other zones, in addition to the value placed by the assessing officers on the timber, there was for the year 1914, placed upon the lands themselves a value of \$1.00 to \$5.00 per acre, and the same, in the case of these plaintiffs' lands, was done arbitrarily, unreasonably and unlawfully and without any reference to

the actual value thereof. Many of the lands owned by these plaintiffs are of no value whatsoever, independent of the timber standing or being thereon.

VIII

Another zone thus arbitrarily, unreasonably and unlawfully set off by the assessing officers lies in the Western part of Clallam County. No part thereof lies nearer to the Straits than approximately four to six miles, and no lands within this zone owned by the plaintiffs lie nearer to the Straits than approximately nine miles, and the great body of the lands owned by these plaintiffs within this zone, lie much more distant therefrom. Said zone or district is irregular in form and extends southerly until it reaches the line of Jefferson County, a distance of approximately thirty miles from the Straits of Fuca. There are no harbors upon the Pacific Ocean within the County of Clallam or Jefferson at or through which the timber on the lands of the plaintiffs might or could be brought to market. Within the zone or district described in this paragraph there is a large acreage of land and upon the timber lands within this zone the assessing officers of Clallam County put for the year 1914 for the purposes of taxation the following values, to wit: Upon fir, spruce and cedar timber a valuation of 80c per thousand feet; and upon hemlock a valuation of 40c per thousand feet; upon poles 10c each and upon piles 2c each. In this zone the plaintiffs own lands approximately 7941.06 acres in extent, and the timber upon the same according to the cruise made by the county of Clallam amounts in the aggregate to approximately 715,000 M feet of all sorts, as more fully set forth in Schedule "B" hereto attached and made a part hereof. The value of the lands of the plaintiffs within this zone as fixed and determined by the assessing officers for Clallam County for the year 1914 for the purposes of taxation is \$561,395. All the lands owned by these plaintiffs within this zone are separated from the Straits by a range of mountains.

IX

It has been the practice and custom throughout the

state of Washington for four years or more last past, for the assessing officers and boards of equalization to assess and equalize property for the purposes of taxation, at less than its actual, and full value, the assessors and taxing officers of the various counties assuming some arbitrary standard which has usually been from 35 to 50 per cent of the actual value of the property taxed. This has been known to and acquiesced in by the State Board of Equalization in equalizing such taxes. The assessor of the County of Clallam announces and pretends that for the year 1914 he assessed taxable property within the county of Clallam at and upon the basis of 50 per cent of the true and fair value thereof in money; and the members of the County Board of Equalization announced and pretend that they equalized and approved the assessments upon the taxable property within said county for such year at and upon the same basis. But these plaintiffs aver that such claims and pretenses are untrue in fact, and that the interior timber lands in said county, and in particular the lands owned by these plaintiffs, were and are valued for the purposes of taxation in the year 1914, at sums greatly in excess of 50 per cent of the true and fair valuation thereof in money; that the other properties, real and personal in said county, were valued at sums much less than 50 per cent of the true and fair value thereof in money; and that these plaintiffs were grossly and intentionally discriminated against by the assessing officers of Clallam County in the matter of assessment and taxation upon their lands for the year 1914.

The timber upon the lands of the plaintiffs, as shown by the cruise thus made by the County of Clallam, amounts in the aggregate to approximately 715,000 M feet of all sorts, as more fully shown by Exhibit B attached hereto and made a part hereof. The assessments on the lands of the plaintiffs for the year 1914 were made upon the basis of said cruise and these plaintiffs aver that the timber upon their lands was greatly over-valued by the assessing officers of Clallam County in the valuations put thereon by them for the

purposes of taxation in the year 1914. The valuations thus placed by the assessing officers of Clallam County upon the lands of these plaintiffs described in Exhibit "A" hereto attached, for the purposes of taxation, for the year 1914, amount in the aggregate to \$561,395. These plaintiffs aver that the true and fair value in money of said lands does not exceed the sum of \$550,000. and did not exceed that sum in the year 1914, when said assessment was made. Such assessment was therefore made upon the basis of approximately 102 per cent of the true and fair value thereof in money. No property in said Clallam County, except the timber lands owned by the plaintiffs, and perhaps certain other timber lands similarly situated in the interior of said county, were assessed in said year 1914, at so great a proportion of the true and fair value thereof in money. Such assessment upon the lands of the plaintiffs at so large a percentage of the true and fair value thereof in money was not accidental or unintentional on the part of said assessing officers of Clallam County, but was intentional and willful, and as these plaintiffs aver, was in pursuance of a concerted effort and corrupt and unlawful combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said County of Clallam. Some of the facts relating to the nature of said combination and conspiracy and to the unlawful assessment so made are hereinafter set forth.

XI

The timber lands in the County of Clallam are situate for the most part in the westerly end thereof, the timbered portion of the county owned by private parties and subject to assessment being situate almost entirely within that portion of the county lying west of Range eight and extending from thence practically to the Pacific Ocean. This territory is sparsely settled, containing only a few hundred inhabitants at the most, and those settled for the greater part at Forks and Quillayute Prairies (so-called), Comparatively few of the voters of the county therefore, reside in the

west end district. The county seat of the county is the city of Port Angeles, in the middle district, said city containing approximately 5000 in number. In the east district (so-called) are prosperous farming communities, the same being well settled, particularly in the vicinity of Sequim and Dungeness, the population in said east district being approximately 1500 in number. The voting power of the county is, therefore, in the east and middle Commissioners' districts and particularly in that easterly portion of the county extending from and including Port Angeles to the east county line, the voters in the west district being so few that they have little voice in the county affairs. The lands in the west end of the county, being almost entirely timbered lands, except at the small prairies of Forks and Quillayute, are incapable at the present time of supporting any considerable population. They are mostly owned by non-residents of said county.

XII

The assessing officers of the county of Clallam (with the exception of one County Commissioner from the west district) are elected by the votes of those resident in the middle and east districts. Because of the preponderance of votes in those districts, and for the purpose, as these plaintiffs aver, of ingratiating themselves with their constituents and serving their own individual and selfish ends, the said assessing officers of Clallam County have wrongfully, unlawfully, and corruptly combined and concerted together with the intent and purpose to increase the assessments upon the timber lands in the west end of the county beyond their proportion of the true and fair value of the property within the county, and to lower and depreciate the assessments upon the property in the city of Port Angeles, and contiguous thereto or in that vicinity, the farming lands in the east end of the county and other properties within the county, and especially in the middle and east districts thereof and to assess the same upon a basis and at a valuation far below their proportion of the true and fair value of the property subject to assessment in Clallam County. In pursuance of this

combination and conspiracy it has been the custom of the assessor of the County of Clallam to consult and advise with the other members of the County Board of Equalization, or with all those resident in the middle and east districts, in making his assessment rolls, and that custom, as these plaintiffs are informed and believe, was followed by the assessor in making his rolls for 1912, 1913 and 1914. The assessment roll, as prepared by the assessor does not, therefore, and in each of the years above mentioned did not represent the judgment of the assessor, but was and is the result of the combination and conspiracy with other members of said County Board of Equalization, and this roll thus prepared by the assessing officer, is approved as a matter of course, in all substantial respects, and particularly as relates to assessments of timber lands, by the County Board of Equalization when it meets to review the same. As a result, no fair hearing as contemplated by statute, is possible to be had on appeal to said Board. And these plaintiffs aver that this practice has been followed in Clallam County for several years continuously last past and that, when these plaintiffs appealed to said Board in the year 1910, their attorney addressed said Board at the meeting of its session, and was told in substance by one of the members of said Board, speaking in its behalf, that it was needless to introduce any evidence of values of timber lands for no such evidence would change the views of said board.

XIII

In the years 1912, 1913 and 1914 and prior thereto, gross discriminations were practiced by the assessing officers of Clallam County against your plaintiffs and other owners of timber lands in the interior of the county and in favor of other owners of property subject to taxation in Clallam County. These discriminations were aimed in particular at these plaintiffs and other owners of interior timber for the reason that they own large bodies of lands in said county, but control no votes and exercise no political influence therein, and the size of their holdings has constituted an inducement

to said assessing officers to place a large and greatly disproportionate share of the taxes levied within the county upon these plaintiffs and such other owners of interior timber, and thereby relieve other property owners within the county of some portion of that burden of taxation, which under the Constitution and laws of Washington, equitably and lawfully falls upon them. These discriminations thus practiced against these plaintiffs have been and are with the intent and purpose to favor, at the expense of the plaintiffs and other owners of interior timber, all owners of property at Port Angeles and in the vicinity thereof, all owners of property in the east district (so called), all owners of personal property throughout the county and likewise the owners of timber lands immediately upon the Straits.

XIV

The plaintiffs have caused diligent and careful examination to be made of the assessment rolls of Clallam County for the years 1912, 1913 and 1914, and a like examination of property values within the county, and as a result thereof now find that the lands and other properties situate at Port Angeles and subject to taxation, are valued upon said assessment rolls as equalized for such years at not to exceed 10 to 20 per cent of their true value in money. The County Board of Equalization of Clallam County is, and for the years 1912, 1913 and 1914 was composed of five members, of whom three are the county commissioners and the other two are the County Treasurer and the County Assessor respectively. Of said members of the Board one County Commissioner, representing the middle district, resides at Port Angeles, and is chairman of the Board. The County Treasurer and County Assessor also reside at Port Angeles. A fourth member resides in the east district, and the remaining member in the west district. Three out of the five members of the County Board of Equalization are therefore residents of Port Angeles and the major part of the population of the county is also found at Port Angeles. These members of the Board resident at Port Angeles are themselves owners of property at Port Angeles.

In order to favor themselves and their constituents at Port Angeles aforesaid, the three members resident at Port Angeles have combined and conspired with the east end Commissioner to put low valuations upon the property at Port Angeles and vicinity, and high and unequal valuations upon the timber lands situate in the west end of the county and in particular upon the timber lands of these plaintiffs and other owners of timber lands in the interior of Clallam County.

XV

As the result of diligent and careful examination made by these plaintiffs of the assessment rolls of Clallam County for the years 1912, 1913 and 1914, and a like examination of the property values within the county, these plaintiffs find that the farming lands and other properties situate in the east end subject to taxation are valued upon said tax rolls as equalized for such years, at not to exceed 25 to 30 per cent of their true and fair value in money.

XVI

As the result of diligent and careful examination made by the plaintiffs of the assessment roll of Clallam County for the years 1912, 1913 and 1914 and a like examination of the property of others within the county, plaintiffs find that the personal property within said county consisting of stocks and goods, wares and merchandise at Port Angeles, and other personal properties situate at Port Angeles and elsewhere within the county, are valued by the assessing officers of Clallam County for the year 1914 at not to exceed 10 to 15 per cent of their true and fair value in money.

XVII

The lands owned by the plaintiffs lie, as hereinbefore stated, in the valleys of the Solduc and Calawa Rivers and upon the benches and ridges between the same, or adjacent thereto. These lands are at present wholly destitute of facilities for transportation and it is impossible to bring the timber thereon into the market. In order to bring said timber to market it is necessary that facilities be provided for transportation to Gray's Harbor on the south or to the Straits of Fuca on the

north. Grays' Harbor is far distant, no railroad from that direction extending farther north than Moclips, a distance of more than sixty miles from the lands of your plaintiffs. Few of the lands of the plaintiffs are less than twelve miles from the Straits and most of them lie a still greater distance therefrom, and all of said lands of the plaintiffs are cut off from the Straits by the range of mountains running east and west through the county of Clallam. It is therefore impossible to bring the timber from plaintiffs' land to market except by transporting the logs or lumber cut therefrom across this range of mountains. This cannot be accomplished except by the construction of a railroad at great expense. This expense is beyond any present means at the command of the plaintiffs and is likewise an expense which, in the present conditions of the lumber market, or in any conditions of the lumber market which have at any time heretofore prevailed on the Pacific Coast, is prohibitive. This fact has a direct and important bearing on the present value of the plaintiffs' land. Upon the Straits of Fuca however, and immediately adjoining tide-water, there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits at the present time. Extensive logging operations have for many years been carried on and are now being carried on in this portion of Clallam County lying immediately upon the Straits. This Straits timber (so-called) is in the zone or district arbitrarily, unreasonably and unlawfully laid off by the assessing officers as recited in paragraph VII, in which zone or district the timber is valued for the year 1914 by the assessing officers of Clallam County as follows: Fir, spruce and cedar 90c per thousand feet, and hemlock at 40c per thousand feet; whereas upon the lands of these plaintiffs which lie within the interior of the county and separated from tide-water by a range of mountains the timber is assessed at slightly lower figures, being 80c for fir, spruce and cedar, and 40c for hemlock. These plaintiffs say that the true and fair value in money of said timber so lying upon tide-water or adjacent thereto, is

at least twice the true and fair value in money of the timber on these plaintiffs' lands.

XVIII

The City of Port Angeles, where the majority of the voters of Clallam County reside, is situate at tide-water and upon a harbor which it is the wish of the inhabitants of said city may become the seat of a considerable commerce. To this end there is an ardent desire on the part of the inhabitants of Port Angeles that the timber owners of Clallam County build mills at Port Angeles, construct railroads into the interior of the county, transport logs from the interior of the County to Port Angeles, and saw the same into lumber at that city, thereby adding to the growth and development of Port Angeles as respects both industries and population. Various of the inhabitants of Port Angeles, including the assessor, have complained to these plaintiffs that, because they failed to build saw mills and railroads or cause the same to be done, they had pursued and were pursuing a policy hostile to the true interests of the county and especially of Port Angeles, and that such interests would be promoted only by building saw mills and railroads; and these plaintiffs aver that, as part of the combination and conspiracy aforesaid, it is the purpose of the assessing officers of Clallam County, representing as they believe the sentiment among the voters at Port Angeles, to assess the timber lands in the west end of Clallam County at exorbitant sums, as a means of compelling the erection of mills at Port Angeles, the construction of railroads into the interior of the county, and the commencement and carrying on of logging and lumbering operations within the county. In particular it has been and is a part of said combination and conspiracy to compel the plaintiffs, as some of the large timber land owners of Clallam County, to erect such mills and construct such railroad and commence and conduct lumbering operations; and through influential citizens of Port Angeles, these plaintiffs have been assured that, if they would begin to operate their timber and employ a considerable number of men, they might rely that they

would henceforth be fairly and equitably treated as respects taxation. The plaintiffs aver that the majority of the members of the Board of Equalization are themselves owners of real property at Port Angeles and are therefore, personally interested in its rapid growth and development, and desire, for their individual aggrandizement, to compel the plaintiffs to erect mills and construct railroads and commence and conduct lumbering operations, despite the fact that no such operations can be conducted with profit in the market conditions now prevailing.

XIX

The plaintiffs aver that the unequal, discriminating and unlawful assessments which are herein complained of are not accidental or unintentional on the part of said assessing officers of Clallam County, but that the same are the direct and immediate result of a corrupt and unlawful intent on the part of the County Assessor for the county of Clallam, and the members of the county Board of Equalization of said county, or the majority of said members, to discriminate against the timber land owners in the west end of said county, and particularly against the plaintiffs in the matter of taxation, and in favor of all owners of property in the middle and east districts of the county, and unjustly and illegally to overvalue the property of the plaintiffs for purposes of taxation and to undervalue, for the purposes of taxation, other lands and properties within said County of Clallam, including all property situate in Port Angeles or the vicinity thereof, all farming properties in the east end of said County of Clallam and all other properties, real or personal, in the middle and east districts, as well as certain other timber lands in said county situate within the zone lying immediately upon the straits, as set forth in paragraph VII of this bill.

XX

The plaintiffs aver that by Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington, it is provided that all property shall be assessed at not to exceed fifty per cent of its

true and fair value in money; that the true and fair value in money of the lands owned by your plaintiffs and particularly described in Exhibit "A" hereto attached, with the timber standing thereon, does not exceed the sum of \$550,000 and did not exceed that sum when the assessments of 1913 and 1914 were made; that under said statute of the state of Washington any assessment of said lands for purposes of taxation at a sum greater than \$275,000 is unjust, illegal and void; that the true and fair value in money of the lands so owned by the plaintiffs is known to the assessor of said county of Clallam, as well as to the members of the County Board of Equalization thereof, and was so known at the time of the making of assessment and at the time of the approval thereof by said Board of Equalization; but that, wholly disregarding the duty thus placed upon them by the law to assess said lands at no greater sum than one-half their true and fair value in money, the said Assessor and the said Board of Equalization fraudulently and unlawfully caused the same to be assessed at a sum exceeding by at least 286.95, the 50 per cent of the true and fair value in money of said lands, contrary to the provisions of the statute above specified, and that such over assessment was made and approved by said assessing officers with the fraudulent and corrupt intent of placing upon your orators the burden of an excessive and unjust proportion of the taxes levied and collected within said county of Clallam for said year. The taxes levied for the year 1914 by the officers of Clallam County upon the lands owned by your orators and described in Exhibit "A" amount in the aggregate, to the sum of \$14,095. as shown by the tax roll of said county for that year, whereas had such taxes been levied upon the true and fair value in money of the aforesaid lands, the same would not have exceeded the sum of \$6905. and your plaintiffs aver that by the fraudulent and unlawful practices of the assessing officers of Clallam County, of which complaint is herein made, there were and are unlawfully, unjustly and fraudulently imposed upon its lands described in Exhibit "A" taxes for the year

1914 to the amount of at least \$7190.16 in excess of all taxes which might or could equitably or lawfully be imposed thereon.

XXI

The overvaluation of the lands of plaintiffs and other owners of interior timber, and the undervaluation of other property in said county, of which complaint is herein made, are in pursuance of a definite, settled policy, design and plan, systematically adopted by said assessing officers and practiced for several years last past. The plaintiffs aver that the assessment of the lands of the plaintiffs and other owners of timber lands in the interior of Clallam County at sums which are proportionately much higher than the assessments imposed upon other properties, real and personal, in said county, is and results in an actual fraud upon the plaintiffs, and the said plan so resulting in such fraud upon the plaintiffs was and is arbitrarily and systematically adopted and carried out by the assessor and members of the County Board of Equalization and by the defendants herein.

XXII

The assessments upon the lands of the plaintiffs were made by the Assessor of said county for the year 1912 at the high, excessive, unlawful and illegal rates herein specified, and upon the unlawful and fraudulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll. But such review was ostensible, specious and fraudulent in character, the members of the Board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. The plaintiffs, through their managing officer and attorneys, appeared before the County Board of Equalization when the same was sitting at its regular session in 1912, and protested against said excessive, unjust and unlawful assessments upon its lands. Such protest was both oral and in writing. The protests so made were arbitrarily disregarded and overruled by said Board, and the petition so filed by the plaintiffs

to equalize the assessments and put the assessments on the property of plaintiffs on the same basis as the assessments upon other property in said county, was arbitrarily denied.

XXIII

The assessments upon the lands of the plaintiffs were made by the Assessor of said County for the year 1913, at the high, excessive, unlawful and illegal amounts and rates herein specified and upon the unlawful and fraudulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll, but such review was ostensible, specious and fraudulent in character, the members of the board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. The plaintiffs, through their attorney, appeared before the County Board of Equalization when the same was sitting at its regular session in 1913, and protested against said excessive, unjust and unlawful assessments upon its lands. The protests so made, both orally and in writing, were arbitrarily disregarded and overruled by said Board, and the petition of the plaintiffs to equalize their assessments and put the same on the same basis as the assessments upon other properties in said County, was arbitrarily and unlawfully denied.

XXIV

The assessments upon the lands of the plaintiffs were made by the Assessor of said county for the year 1914, at the high, excessive, unlawful and illegal amounts and rates herein specified, and upon the unlawful and fraudulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll, but such review was ostensible, specious and fraudulent in character, the members of the Board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. The plaintiffs, through their attorney, appeared before the County Board of Equaliza-

tion when the same was sitting at its regular session in 1914 and protested against said excessive, unjust and unlawful assessments upon its lands. The protests so made, both orally and in writing, were arbitrarily disregarded and overruled by said Board, and the Petition of the plaintiffs to equalize their assessments and put the same on the same basis as the assessments upon other properties in said County, was arbitrarily and unlawfully denied.

XXV

Thereafter the taxes were extended against the lands of the plaintiffs upon the tax rolls and books of said county, the same being so extended upon the basis of the high, excessive, unlawful and fraudulent assessments upon the lands of these plaintiffs of which complaint is herein made. Said tax rolls and books were delivered to the defendant Herbert H. Wood, Treasurer of said county, and said Herbert H. Wood as such Treasurer has demanded payment of said illegal, fraudulent and arbitrary taxes assessed and levied in manner as hereinbefore specified. The taxes so demanded by said Herbert H. Wood, Treasurer of said county, amount in the aggregate to the sum of \$14,095.16 and said Treasurer, unless restrained by the order of this court will sell the property of the plaintiffs to satisfy the taxes thus fraudulently and unlawfully assessed and levied.

XXVI

That upon the 24th day of February, 1915, the plaintiffs tendered and offered to pay to said Herbert H. Wood, Treasurer of Clallam County, and to said Clallam County, the defendants herein, the full and true sum of \$6905. lawful money of the United States, in payment of the taxes levied upon their lands in said Clallam County, for the year 1914, which tender was refused and plaintiffs aver that the sum thus tendered is more than the taxes justly and equitably due from the plaintiffs to the defendants upon their lands aforesaid for such year, including all penalties, interest and costs, and more than the full amount which the plaintiffs would be required to pay if their property were

assessed upon the same basis as all other property in Clallam County, or if said assessments were legal and equitable or equal and uniform with or compared to the assessments upon all other property within said county. The plaintiffs bring into court the sum of money in this paragraph specified and tender and offer to pay, and do hereby pay the same to and for the use and benefit of the defendant County of Clallam, and the plaintiffs offer to pay and will pay any such other or further amounts as the court may find to be justly due from them or equitably owing by them to said county of Clallam. And the plaintiffs aver that the taxes upon their said lands for all years prior to 1914 have been paid and that the taxes for the year 1914 have been paid and discharged by the tender and payment herein specified.

XXVII

That prior to the assessment and levy of the taxes complained of herein these complainants under instruments of conveyance conveying to them all of the lands hereinabove described, were in the actual possession and occupation of a portion of said lands for the whole; otherwise said lands are vacant and unoccupied.

XXVIII

That it is the duty of the Treasurer of Clallam County under the law of the state, after receiving the moneys so taxed to pay the sum so received in the proportions designated in his tax books to the various road and bridge funds and to the city of Port Angeles and to the state of Washington and to the various funds for which said taxes are collected and distributed under the law, and to other officers and authorities entitled to receive the same, and if the plaintiffs instituted suit to recover back the taxes so paid to the town of Port Angeles or county, or road, or school districts, they would be obliged to bring suit against each one of the taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the state of Washington could not be collected back by any legal proceeding whatever; and

if repayment could be compelled from the town of Port Angeles and other taxing bodies, such repayment would not cover the costs, including commissions deducted for the collection of the tax, and penalties, and complainants would be subject to great and irreparable injury for which there is not a complete, adequate or any remedy at law.

That the Treasurer of Clallam County is required under the law upon the delinquency of said taxes, to immediately issue delinquent certificates against said lands, under which same are authorized to be sold and would be sold to pay said taxes. The levy and existence of said tax and the threatened issuance of delinquent certificates and sale thereunder constitute a cloud upon plaintiffs' title to said lands and all of them.

XXIX

The plaintiffs aver that by reason of the facts hereinbefore recited, the assessment of the plaintiffs' lands for taxation for the year 1914 is arbitrary, unjust, illegal, and fraudulent, as compared with the assessment of all other property in said Clallam County, and that such unlawful and fraudulent assessment is prohibited by the Constitution of the State of Washington and that the assessment so made is in particular, in violation of and contrary to Section 2, Article VII of the Constitution of the state of Washington, in and by which it is provided that assessments and taxes shall be uniform and equal on all property in said state, according to its value in money, and that there shall be secured a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, and that the assessment so made is also in violation of and contrary to Section 1 of Article VII of the Constitution of the State of Washington which declares that all property in the state, not exempt under the laws of the United States, or under said state constitution, shall be taxed in proportion to its value. And the plaintiffs aver that in truth and in fact the taxes upon their lands, described in Exhibit "A" are

not uniform and equal as compared with all other property in said County of Clallam.

XXX

The plaintiffs aver that if the assessment and levy of taxes for the year 1914 upon their lands in Clallam County hereinbefore described be not set aside, vacated and held for naught, the same will result in the taking of their property without due process of law, and in denying to them the equal protection of the laws, contrary to the provisions of the XIVth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. And the plaintiffs pray the protection afforded by said XIVth Amendment to the Constitution of the United States, and aver that this suit arises under the Constitution and Laws of the United States, and that for this reason, as well as because of the diverse citizenship of the parties, this Court has jurisdiction thereof.

XXXI

The plaintiffs are remediless at and by the strict rules of the common law, and are relievable only in a court of equity, where matters of this sort are properly cognizable and relievable.

XXXII

The plaintiffs therefore ask the aid of this Court in the premises and pray:

(a) That the County of Clallam, a municipal corporation and Herbert H. Wood, Treasurer of said county, answer this bill without oath, answer under oath of said defendants being hereby expressly waived.

(b) That this court decree that the assessments and taxes for the year 1914, imposed by the assessing and taxing officers of the County of Clallam upon the lands of the plaintiffs are unlawful, fraudulent and void; that the same are contrary to and in violation of the Constitution and Laws of the State of Washington and the provisions of the 14th Amendment to the Constitution of the United States.

(c) That this Court determine and decree what sums were or are justly owing by the plaintiffs for the taxes for the year 1914 upon their lands in Clallam County, described in Exhibit "A" hereto attached, and what assessments and taxes upon their lands are equal and uniform with or compared to the assessments and taxes upon all other property in said County.

(d) That it be determined and decreed that the sum of \$6905 tendered by the plaintiffs to said defendants is sufficient to pay all sums which were or are justly and equitably owing by the plaintiffs for the taxes for the year 1914 upon their lands in said County of Clallam, described in said Exhibit "A".

(e) That said defendants, and each of them, be permanently enjoined and restrained from attempting to collect for the taxes for the year 1914 any sum or sums whatever in addition to those already tendered, and from selling or attempting to sell the lands or property of the plaintiffs, or any part thereof, to satisfy said taxes so levied for the year 1914 upon their lands in Clallam County, and that the cloud upon the title of the plaintiffs to their said lands which exists because or by reason of such unjust, illegal and fraudulent taxes so levied be forthwith removed and cancelled.

(f) That said defendants, and each of them, be in like manner enjoined until the further order of this Court.

(g) That such other or further order or decree be made in the premises as the nature of the case may require, and as to the Court shall seem meet.

XXXIII

May it please your Honor to grant unto the plaintiffs the writ of injunction to be issued out of and under the seal of this Court in due form of law, permanently enjoining and restraining said defendants County of Clallam and Herbert H. Wood, Treasurer of said County, and each of them from attempting to collect for the taxes of the year 1914 any sum or sums whatsoever in addition to those already tendered by the plaintiffs, and from selling or attempting to sell the lands or property of the plaintiffs or any part

thereof, to satisfy said taxes so levied for the year 1914 upon their lands in Clallam County; and that a writ of injunction be issued enjoining and restraining the defendants and each of hem in like manner as herein prayed, uniiil the further order of this Court.

XXXIV

May it please the Court the promises being considered to grant unto the plaintiffs the writ of subpoena to be issued out of and under the seal of this Court, directed to said County of Clallam, a municipal corporation, and Herbert H. Wood, Treasurer of said County of Clallam, commanding them and each of them to appear before this Court at a date therein specified and answer this bill of complaint, and plaintiffs will ever pray, etc.

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTHY,
Plaintiffs.

By DAN EARLE.

PETERS & POWELL,
EARLE V. STEINERT,

Attorneys for Plaintiffs.

UNITED STATES OF AMERICA,
COUNTY OF KING, STATE
OF WASHINGTON—ss.

On this 6th day of March, 1915, before me, a Notary Public in and for the State of Washington, personally appeared Dan Earle, to me known to be the person who subscribed the foregoing Bill of Complaint in complainants' behalf, who made oath and says that he subscribed the name of complainants to said Bill of Complaint; that he is properly authorized to do so; that he is the Attorney of said complainants; that he has read the Bill of Complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

(Seal)

VOLNEY P. EVERS,
Notary Public in and for the State of Washington,
residing at Seattle.

EXHIBIT "A"

TOWNSHIP 28 NORTH, RANGE 14 WEST

Section 1	Lot 2
"	" 3
"	" 4
"	" 5
"	" 6
"	" 7
"	" 8
"	" 9
"	" 11
"	" 12
"	" 13
"	S $\frac{1}{2}$ of NE $\frac{1}{4}$
"	NW of SE
"	SW $\frac{1}{2}$ of SE $\frac{1}{2}$
"	S $\frac{1}{2}$ of SW $\frac{1}{4}$
Section 2	Lot 5
"	" 6
"	" 7
"	S $\frac{1}{2}$ of NE $\frac{1}{4}$
"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$
"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$
"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$
"	SE $\frac{1}{4}$ of SW $\frac{1}{4}$
Section 10	S $\frac{1}{2}$ of NW $\frac{1}{4}$
"	NE of SW $\frac{1}{4}$
11	Lot 1
"	" 2
"	" 4
"	" 5
"	" 6
"	" 10
"	" 11
"	" 12
"	" 13
"	" 14
"	N $\frac{1}{2}$ of NW $\frac{1}{4}$
"	" 12 SW $\frac{1}{4}$ of NW $\frac{1}{4}$
Section 12	Lot 1
"	" 2

	“	“	3
	“	“	4
	“	“	5
	“	N $\frac{1}{2}$ of NW $\frac{1}{4}$	
	“	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	
	“	N $\frac{1}{2}$ of SW $\frac{1}{4}$	
	“	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	
Section 13	Lot	1	
	“	“	2
	“	“	3
	“	“	4
	“	“	5
	“	“	6
	“	“	7
	“	“	8
	“	“	9
	“	“	14
	“	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	
	“	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	
	“	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	
Section 14	Lot	1	
	“	“	3
	“	“	5
	“	“	6
	“	NE $\frac{1}{4}$	
	“	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	
	“	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	
	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$	
Section 15	Lot	1	
	“	“	10
	“	“	12
	“	“	13
	“	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	
Section 23	Lot	1	
TOWNSHIP 28 NORTH, RANGE 13 WEST			
Section 3	Lot	2	
	“	“	5
	“	“	6
	“	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	
	“	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ except 2 acres	
Section 4	Lot	1	

	"	"	5
	"	"	6
	"	N $\frac{1}{2}$ of SE $\frac{1}{4}$	
Section	5	Lot 1, except right-of-way	
	"	" 2, except right-of-way	
	"	" 3	
	"	" 4	
	"	" 5	
	"	" 6	
	"	" 7	
	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	
	"	S $\frac{1}{2}$ of NW $\frac{1}{4}$	
	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	
Section	6	Lot 1	
	"	" 2	
	"	" 3	
	"	" 4	
	"	" 5	
	"	" 6	
	"	" 8	
	"	" 9	
	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	
Section	7	Lot 6	
	"	" 10	
Section	8	" 1	
	"	" 2	
Section	18	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	
	"	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	
Section	28	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	
Section	33	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	
	"	Lot 1	
	"	" 5	

TOWNSHIP 29 NORTH, RANGE 13 WEST

Section	19	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	
Section	20	S $\frac{1}{2}$ of SE $\frac{1}{4}$	
	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	
	21	Lot 4	
	"	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ except right-of-way	
	"	SW $\frac{1}{4}$ of SW $\frac{1}{4}$ except right-of-way	
Section	22	SW $\frac{1}{4}$ of NE $\frac{1}{4}$ except right-of-way	
Section	22	SW $\frac{1}{4}$ of NE $\frac{1}{4}$ except right-of-way	

- “ NW $\frac{1}{4}$ of SE $\frac{1}{4}$
 “ SW $\frac{1}{4}$ of SE $\frac{1}{4}$
 “ NE $\frac{1}{4}$ of SW $\frac{1}{4}$
 “ SE $\frac{1}{4}$ of SW $\frac{1}{4}$
 “ Lot 3
 Section 27 NW $\frac{1}{4}$ of NE $\frac{1}{4}$
 “ SW $\frac{1}{4}$ of NE $\frac{1}{4}$
 “ NE $\frac{1}{4}$ of NW $\frac{1}{4}$
 “ SE $\frac{1}{4}$ of NW $\frac{1}{4}$
 “ SW $\frac{1}{4}$
 Section 28 Lot 6
 “ NW $\frac{1}{4}$ of NW $\frac{1}{4}$ except right-of-way
 “ SW $\frac{1}{4}$ of NW $\frac{1}{4}$ except right-of-way
 “ S $\frac{1}{2}$ of SE $\frac{1}{4}$
 Section 29 NE $\frac{1}{4}$
 “ NW $\frac{1}{4}$
 “ NE $\frac{1}{4}$ of SE $\frac{1}{4}$ except right-of-way
 “ NW $\frac{1}{4}$ of SE $\frac{1}{4}$
 “ N $\frac{1}{2}$ of SW $\frac{1}{4}$
 “ Lot 1, except right of way
 “ “ 2
 “ “ 3
 “ “ 4
 “ “ 7
 “ “ 8
 “ “ 9, except right-of-way
 Section 30 SE $\frac{1}{4}$ of NE $\frac{1}{4}$
 “ N $\frac{1}{2}$ of SE $\frac{1}{4}$
 “ Lot 6
 “ “ 7
 “ “ 8
 “ “ 9
 Section 31 N $\frac{1}{2}$ of NE $\frac{1}{4}$
 “ SW $\frac{1}{4}$ of NE $\frac{1}{4}$
 “ SE $\frac{1}{4}$
 “ SE $\frac{1}{4}$ of SW $\frac{1}{4}$
 “ Lot 4
 “ “ 5
 “ “ 6
 “ “ 7
 “ “ 9

- Section 32 " 1
- " " 2, except right-of-way
- " " 3
- " " 4
- " " 5
- " NW¹/₄ of NE¹/₄, except right-of-way
- " SE¹/₄ of NE¹/₄
- " SW¹/₄ of NE¹/₄, except right-of-way
- " NE¹/₄ of SE¹/₄
- " NW¹/₄ of SE¹/₄, except right-of-way
- " S¹/₂ of NW¹/₄
- " SE¹/₄ of SE¹/₄
- " SW¹/₄ of SE¹/₄, except right-of-way
- Section 33 NW¹/₄ of NE¹/₄
- " S¹/₂ of NE¹/₄
- " Lot 2
- " SE¹/₄ of NW¹/₄
- " SE¹/₄
- Section 34 NW¹/₄ of NE¹/₄
- " SW¹/₄ of NE¹/₄
- " NE¹/₄ of NW¹/₄
- " SE¹/₄
- " SW¹/₄
- Section 35 SW¹/₄

EXHIBIT B

Fir	501,293 ¹ / ₂ M	
Spruce	136,761 ¹ / ₂ M	
Cedar	301 M	
White Fir	361 M	
Hemlock	76,212 ³ / ₄ M	
	<hr/>	714,929 ³ / ₄ M
Hemlock Poles	25,315	
Fir Poles	2,530	
Spruce Poles	526	
	<hr/>	28,371
		Poles
Hemlock Ties	66,072	
Fir Ties	175	
	<hr/>	66,247
		Ties

Indorsed: Bill of Complaint. Filed March 6, 1915.

NO. 57

MOTION TO DISMISS PLAINTIFFS' BILL

Come now the defendants in the above entitled action appearing by Sanford C. Rose, County Attorney for Clallam County, Washington, J. E. Frost, C. F. Riddell and Edwin C. Ewing, attorneys for the defendants, and respectfully move the court for an order dismissing the bill of complaint of plaintiffs upon the grounds and for the reasons following:

I

Because the plaintiffs at all times mentioned in their said bill of complaint have had a plain, speedy and adequate remedy under the statutes of the State of Washington.

II

Because it fully appears in plaintiffs' bill of complaint that the matters and things therein alleged and complained of have long been acquiesced in and consented to by plaintiffs and plaintiffs are in equity and good conscience denied from controverting their justice and legality.

III

Because the facts alleged in plaintiffs' said bill of complaint are not in violation of any constitutional or statutory provision nor of any rule or principle of justice or equity, but to the contrary are in compliance with both law and equity.

IV

Because the matters and things alleged in plaintiffs' said bill of complaint are not sufficient to entitle it to the relief prayed for or to any relief whatsoever or to be heard or to maintain an action.

SANFORD C. ROSE,
J. E. FROST,
C. F. RIDDELL,
EDWIN C. EWING.

Indorsed: Motion to Dismiss. Filed March 26, 1915.

IN EQUITY NO. 57
ORDER DENYING DEFENDANTS' MOTION TO
DISMISS

This cause coming on to be heard upon the motion of the defendants Clallam County and Herbert H. Wood, Treasurer of said county, to dismiss the bill of complaint of the plaintiffs and the matter having been argued by counsel and submitted to the court said motion to dismiss is overruled and denied.

To which ruling of this court the defendants except and their exception is allowed.

Done in open court this 29th day of March, 1915.

JEREMIAH NETERER, Judge.

Indorsed: Order Denying Motion to Dismiss.
Filed March 29, 1915.

In Equity No. 57

ANSWER TO THE BILL OF COMPLAINT.
TO THE HONORABLE JUDGE OF THE ABOVE
ENTITLED COURT:

Come now Clallam County, a municipal corporation of the State of Washington, and Herbert H. Wood, Treasurer of said Clallam County, the defendants named in the above entitled action and file this their answer to the bill of complaint of the plaintiffs herein.

I.

With reference to paragraph I of said bill, the defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, but they are willing to admit the same and not put the plaintiffs to proof thereof.

II.

With reference to paragraph II of said bill, the defendants admit the allegations thereof.

III.

With reference to paragraph III of said bill, the defendants admit the allegations thereof.

IV.

With reference to paragraph IV of said bill, the defendants admit the allegations thereof.

V.

With reference to paragraph V of said bill, the defendants admit the allegations thereof.

VI.

With reference to paragraph VI of said bill, the defendants admit that for the purpose of assessment for taxation and as a basis therefor, the assessing officers of Clallam County have from time to time within the period of five or six years last past caused timber lands in said county to be cruised and the cruises and estimates thus made to be adopted by the county; that most of the timber lands in the county owned by private parties as distinguished from Government lands have now been cruised, and that all the lands owned by the plaintiffs have been so cruised, and that so far as respects timber lands within the county upon which cruises have thus been made, it is claimed by the assessing officers that the same have been assessed upon the basis of the cruises thus obtained; admit that the assessments made by the assessing officers of the county have been made according to certain zones or districts which the assessing officers have laid off; but deny that said zones or district have been laid off and determined arbitrarily, unreasonably or unlawfully, or without reference to and in disregard of the true and fair value in money of timber on the lands within such zones or districts, or in any other manner than fairly, truly, impartially, and as a result of the honest and mature deliberation and judgment of the assessing officers of said county formed upon full information after careful inquiry and investigation.

VII.

With reference to paragraph VII of said bill, the defendants deny that the zone therein referred to was arbitrarily laid off; admit the geographical location of said zone, but deny its dimensions and area as alleged in said paragraph; deny that within this zone are included those timber lands which of all timber lands within the county are of the greatest value; admit that within this zone the timber is valued for

the year 1914, by the assessing officers of Clallam County at the figures set forth in said paragraph; admit that in this and all other zones, in addition to the values placed by the assessing officers upon the timber, there was for the year 1914 placed upon the lands themselves a valuation of \$1 to \$5 per acre; deny that the same, in the case of the plaintiffs' lands or the lands of any other persons, was done arbitrarily, unreasonably and unlawfully and without any reference to the actual value thereof, or in any other manner than fairly, truly, impartially and according to law; and deny that many or any of the lands of the plaintiffs are of no value whatsoever independent of the timber standing or being thereon.

VIII.

With reference to paragraph VIII of said bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably and unlawfully laid off by the assessing officers; admit that it lies in the Western part of Clallam County; deny that no part thereof lies nearer to the Straits than approximately four to six miles and that no lands within this zone owned by the plaintiffs lie nearer to the Straits than approximately nine miles and that the great body of the lands owned by the plaintiffs within this zone lie much more distant therefrom; admit the form and extent of said zone as alleged in said paragraph; deny that there are no harbors upon the Pacific Ocean within the counties of Clallam or Jefferson at or through which the timber on the lands of the plaintiffs might or could be brought to market; admit that within this zone there is a large acreage of land and that upon the timber lands within this zone the assessing officers of Clallam County put for the year 1914, for the purpose of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the amounts of the figures therein set forth, and that the value of the lands of the plaintiffs within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1914, for the purpose of taxation is as stated therein; deny that all

the lands owned by the plaintiffs within this zone or the other zones or districts set off by said assessing officers are separated from the Straits of Fuca by a range of mountains.

IX.

With reference to paragraph IX of said bill, the defendants deny the practice by assessors and taxing boards of the custom therein referred to, and deny the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1914, he assessed taxable property within Clallam County upon the basis of fifty per cent of its true and fair value in money, or upon any other and different basis than that provided by the laws of the State of Washington at the time the assessments for the year 1914 were made; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph (or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the year 1914 were made); deny that the interior timber lands in said county, including the lands owned by the plaintiffs were and are valued in the year 1914 for the purpose of taxation at sums in excess of fifty per cent of the true and fair value thereof in money; deny that other properties in said county, real and personal, were valued at sums less than fifty per cent of the true and fair value thereof in money; deny that the plaintiffs were discriminated against grossly and intentionally, or at all, by the assessing officers of Clallam County in the matter of the assessment and taxation of their lands for the year 1914.

X.

With reference to paragraph X of said bill, the defendants admit that the timber upon the lands of the plaintiffs, as shown by the cruise made by the county of Clallam, amounts in the aggregate to the

figures set forth therein, and that the assessments upon said lands for the year 1914 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiffs was over-valued greatly, or at all, by the assessing officers of said county in the valuations put thereon by them for the purposes of taxation in the year 1914; admit that the valuations placed by the assessing officers of said county upon the lands of the plaintiffs for the purpose of taxation for the year 1914 amount to the figures therein set forth, to-wit \$561,395; deny that the true and fair value in money of said lands does not exceed the sum of \$500,000, and did not exceed that sum in the year 1914; deny that said assessment for the year 1914 was made upon the basis of 102 per cent (or upon any other or different basis than the true and fair value in money of all the property assessed;) deny that no property in said Clallam County, save the timber lands owned by the plaintiffs and certain other timber lands similarly situated was assessed in said year 1914 at so great a proportion of its true and fair value in money; deny that the assessment upon the lands of the plaintiffs, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county, as alleged in said paragraph, or at all.

XI.

With reference to paragraph XI of said bill, the defendants admit the allegations thereof.

XII.

With reference to paragraph XII of said bill, the defendants admit the election of the assessing officers of Clallam County as alleged in said paragraph; deny that the assessing officers of said county have combined and concerted together, wrongfully and corruptly, with the intents and purposes alleged, or for any other intent and purpose, or at all; admit that it has been the custom of the assessor of said county to consult and advise with the other members of the County

Board of Equalization of said county, and with residents of the Middle and West and East Districts of said county in making his assessment rolls, and that such custom was followed in making his assessment roll for the years 1912, 1913 and 1914, but deny that such custom is or was in pursuance of a combination and conspiracy as alleged in said paragraph or at all; deny that the assessment roll does not and did not in the years stated represent the judgment of the assessor, and deny that said roll was and is the result of any combination and conspiracy with the other members of the County Board of Equalization; deny that the assessment roll is approved as a matter of course as relates to assessments on timber lands or otherwise by the County Board of Equalization; deny that no fair hearing is possible to be had on appeal to said Board; deny that the custom alleged in said paragraph or any other similar or unlawful custom has been followed in said county for several years continuously past, or at all; and deny that the plaintiffs were refused a hearing upon appeal to said Board in 1910, as alleged in said paragraph, or at all, or that the conversation between attorney for the plaintiffs and the members of said Board took place at said time or at all, with reference to the futility of introducing evidence as to the value of timber lands.

XIII.

With reference to paragraph XIII of said bill, the defendants deny that at the time therein stated or at any other times, for the reasons or with the intent and purpose therein alleged, or for any other purpose whatsoever, were gross or any discriminations, practiced by the assessing officers of said Clallam County against the plaintiffs or any other persons, or in favor of any other persons, as alleged in said paragraph, or at all.

XIV.

With reference to paragraph XIV of said bill, the defendants allege that they are without knowledge or information as to the examination of the assessment rolls of said county by the plaintiffs, and the

result thereof, and they therefore deny the allegations of said paragraph with regard thereto; deny that the lands and other properties situated at Port Angeles and subject to taxation are valued upon said assessment rolls as equalized for such years at not to exceed 10 to 20 per cent of their true and fair value in money; admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as therein alleged, and that the major portion of the population of said county is at Port Angeles; deny that for the purposes therein alleged or for any other purpose, did the three members of said Board resident at Port Angeles, combine and conspire with the Commissioner from the East District, or any other person, against the plaintiffs and other owners of timber lands in the interior of said county, as therein alleged, or against any other person, or at all.

XV.

With reference to paragraph XV of said bill, the defendants allege that they are without knowledge or information as to the examination by the plaintiffs of the assessment rolls of Clallam County for the years 1912, 1913 and 1914 and of the property values within said county, and the results thereof, and they therefore deny the allegations of said paragraph with regard thereto; and deny that the farming lands and other properties situate in the East end subject to taxation are valued upon said tax rolls as equalized for such years at not to exceed 25% to 30% of their true and fair value in money.

XVI.

With reference to paragraph XVI of said bill, the defendants allege that they are without knowledge or information as to the examination by the plaintiff of the assessment rolls of Clallam County for the years 1912, 1913 and 1914 and of property values within said county, and the results thereof, and they therefore deny the allegations of said paragraph with regard thereto; and deny that the personal property within said county described in said paragraph is

valued by the assessing officers of said county for the year 1914 at not to exceed 10% to 15% of its true and fair value in money.

XVII.

With reference to paragraph XVII of said bill, the defendants admit the location of the lands of the plaintiffs as therein stated; deny that said lands are wholly destitute of facilities for transportation, and that it is impossible to bring the timber therefrom into market or that it is necessary that facilities be provided for transportation to Gray's Harbor on the South or the Straits of Fuca on the North; admit that Gray's Harbor is far distant and that no railroad extends further North from that direction than Moclips, and that Moclips is sixty miles from the plaintiff's lands; deny that the lands of the plaintiffs are as distant from the Straits of Fuca as therein stated or that said lands are cut off from the Straits by a range of mountains or that it is impossible to bring the timber from said lands except by transportation across such range of mountains; deny that such transportation is impossible of accomplishment except by the construction of a railroad at great expense, or that such expense is beyond the present means at the command of the plaintiffs or which is prohibitive under the present condition of the lumber market or conditions which have at any time heretofore prevailed, or that the facts alleged in said paragraph have a direct and important bearing upon the present value of the lands of the plaintiffs; admit that upon the Straits of Fuca and immediately adjoining tide water, there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits as stated, and the extensive logging operations now are and for many years have been carried on in that portion of said Clallam County; admit that this Straits timber (so called) is in the zone or district described in paragraph VII of said bill, but deny that said zone was arbitrarily, unreasonably and unlawfully laid off by the assessing officers of said county; admit that in the zones described in said paragraph VII and XVII

the valuations put upon the timber are as stated in said paragraph XVII; and deny that the true and fair value in money of the so called Straits timber is at least twice the true and fair value in money of the timber on the lands of the plaintiffs.

XVIII.

With reference to paragraph XVIII of said bill, the defendants admit the geographical location of Port Angeles as therein stated, and the desires and ambitions of the inhabitants thereof; deny the statements therein imputed to inhabitants of Port Angeles and the Assessor; deny the combination and conspiracy therein alleged or any combination and conspiracy; deny the purposes therein imputed to the assessing officers of said county, and the assurances of influential citizens of Port Angeles therein set forth; deny the ownership of real property in Port Angeles by the majority of the members of the Board of Equalization, and the personal interest and desire of aggrandizement of the members of said Board for the purposes therein imputed or for any other purposes incompatible with their official positions and duties.

XIX.

With reference to paragraph XIX of said bill, the defendants deny that the assessments therein complained of are unequal, discriminating or unlawful, or that they are the result, direct and immediate or otherwise, of any intent, either corrupt or unlawful, or in any wise incompatible with the official positions and duties of said officers, of the County Assessor and the members of the County Board of Equalization of said Clallam County, to discriminate against the plaintiffs or any other persons, or in favor of any persons, either as stated in said paragraph or otherwise, or to undervalue or overvalue the taxable properties in said county for the purposes therein alleged or for any other purposes whatsoever.

XX.

With reference to paragraph XX of said bill, the defendants admit the provisions of paragraph 9112 of Volume 3 of Remington & Ballinger's Annotated Codes

and Statutes of Washington therein referred to; deny that the true and fair value in money of the lands of the plaintiffs therein referred to does not exceed, and did not exceed, when the assessments for 1912, 1913 and 1914 were made, the sum therein stated; deny that under said statute any assessment of lands of the plaintiffs for purposes of taxation at a sum greater than the sum of \$275,000 is unjust, illegal and void; admit that the true and fair value in money of the lands owned by the plaintiffs is known to the Assessor of Clallam County and to the members of the said County Board of Equalization, and was so known at the time of the making of said assessment and the approval thereof by said Board; deny that said officers in making and equalizing such assessments disregarded the duty placed upon them by law, and deny that said officers fraudulently and unlawfully caused said lands to be assessed at a sum exceeding by \$286,395.00 the 50% of the true and fair value in money of said lands; deny that the assessment of said lands was made and approved by said officers with a fraudulent or corrupt intent, or with any other intent incompatible with their official positions and duties, either as stated in said paragraph or otherwise; admit that the taxes levied for the year 1914 upon the lands of the plaintiffs aggregate the sum therein stated, but deny that had said taxes been levied upon the true and fair value in money of said lands, the same would not have exceeded the sum of \$6,905.00; deny that the practices of the assessing officers of said county in the matter of the assessment of the lands of the plaintiffs for the year 1914, or any other year, were fraudulent or unlawful, or in any wise incompatible with the duties of said officers, or that there are or were imposed upon the lands of the plaintiffs for the said year \$7190.16 in excess of all taxes which might or could equitably or lawfully be imposed thereon.

XXI.

With reference to paragraph XXI of said bill, the defendants deny either an over valuation of the lands therein referred to, or the under valuation of other

property in said county and the pursuit and practice of the policy therein imputed to the assessing officers of said county, or any other policy incompatible with their official duties, for several years last past, or at all; deny that the assessment of the lands of the plaintiffs and other owners of timber lands in the interior of said county are proportionately higher than the assessments imposed upon other real and personal properties in said county, or that said assessments are or result in an actual or any fraud upon the plaintiffs; deny that any plan resulting in fraud upon the plaintiffs or any other persons was arbitrarily and systematically or otherwise, adopted and carried out by the officers therein referred to or by the defendants herein.

XXII.

With reference to paragraph XXII of said bill, the defendants deny that the assessments upon the lands of the plaintiffs were made by the assessor of said county for the year 1912 at a high, excessive, unlawful and illegal rate as specified in said bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny that the members of said Board had combined and conspired with the Assessor as therein stated, or at all; admit the appearance and protest of the plaintiffs before said Board at its regular sitting in 1912 as therein stated; admit that the protests of the plaintiffs were overruled by the Board, but deny that the same were arbitrarily disregarded or that the petition of the plaintiffs to equalize their assessment was arbitrarily denied.

XXIII.

With reference to paragraph XXIII of said bill, the defendants deny that the assessments upon the lands of the plaintiffs were made by the assessor of said county for the year 1913 at a high, excessive, unlawful and illegal rate as specified in said bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of

Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny that the members of said Board of Equalization had combined and conspired with the assessor as therein stated, or at all; admit the appearance and protest of the plaintiffs before said Board at its regular sitting in 1913 as therein stated; admit that the protests of the plaintiffs were overruled by the Board, but deny that the same were arbitrarily disregarded or that the petition of the plaintiffs to equalize their assessment was arbitrarily denied.

XXIV.

With reference to paragraph XXIV of said bill, the defendants deny that the assessments upon the lands of the plaintiffs were made by the assessor of said county for the year 1914 at a high, excessive, unlawful and illegal rate as specified in said bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny that the members of said Board of Equalization had combined and conspired with the assessor as therein stated, or at all; admit the appearance and protest of the plaintiffs before said Board at its regular sitting in 1914 as therein stated; admit that the protests of the plaintiffs were overruled by the Board, but deny that the same were arbitrarily disregarded or that the petition of the plaintiffs to equalize their assessment was arbitrarily denied.

XXV.

With reference to paragraph XXV of said bill, the defendants admit the extension of the taxes and the delivery of the tax rolls to the Treasurer of Clallam County, but deny that the basis of such extension and such assessment was high, excessive, unlawful and fraudulent as alleged therein; admit that said Treasurer has demanded payment of such taxes as shown by said rolls, but deny that said taxes are illegal, fraudulent or arbitrary; admit that the taxes so demanded

by said Treasurer amount in the aggregate to said sum of \$14,095.16, and that said Treasurer, unless restrained by order of this court, will sell the property of the plaintiffs to satisfy such taxes.

XXVI.

With reference to paragraph XXVI of said bill, defendants admit the tender of the amount therein stated, and that the said Herbert H. Wood, as Treasurer of said Clallam County, has refused to accept said tender as payment in full of the taxes upon the lands of the plaintiffs for the year 1914; deny that the sum of money thus tendered is more than the taxes justly due and equitably due from the plaintiffs as therein alleged; deny that the plaintiffs' property was assessed upon any different basis than all the other property within said county or that said assessments were other than legal and equitable, equal to and uniform with the assessments upon all other property within said county; deny that the taxes upon the lands of the plaintiffs for all years prior to 1914 have been paid and discharged; and deny that the taxes for the year 1914 have been paid and discharged by the tender and payment as specified in said paragraph.

XXVII.

With reference to paragraph XXVII of said bill, the defendants admit the allegations thereof.

XXVIII.

With reference to paragraph XXVIII of said bill, the defendants admit the duties of the Treasurer of Clallam County with regard to the disposition of taxes collected by him, as stated therein; deny that if the plaintiffs instituted suit to recover back taxes paid, as alleged in said paragraph, they would be obliged to bring suit against each one of the taxing bodies therein mentioned, and deny that thereby there would be necessitated a multiplicity of suits, and deny that the proportion of the tax going to the State of Washington could not be collected back, or that repayment from the town of Port Angeles would not cover costs and other items referred to therein, or that plaintiffs would thereby be subjected to great and irreparable

injury or that plaintiffs would not have a complete, adequate or any remedy at law; admit the duties of the Treasurer of Clallam County with regard to the issuance of certificates of delinquency as therein alleged; and deny that the levy and existence of the tax therein referred to constitute a cloud upon the title to the lands of the plaintiffs or any of them.

XXIX.

With reference to paragraph XXIX of said bill, the defendants deny that the assessment of the lands of the plaintiffs for the year 1914 is arbitrary, unjust, illegal or fraudulent as compared with the assessment of all other property in said Clallam County, or otherwise, or that said assessment as made by the assessor and assessing officers of said county is prohibited by the Constitution of the State of Washington, or is in violation of paragraphs 1 and 2 of Article VII thereof, as therein alleged, or that the taxes upon the plaintiff's lands are not equal and uniform as compared with all other property in said county.

XXX.

With reference to paragraph XXX of said bill, the defendants deny that if the levy and assessments of taxes upon the lands of the plaintiffs for the year 1914 be not vacated, set aside and held for naught, the same will result in the taking of the property of the plaintiffs without due process of law or in denying to the plaintiffs the equal protection of the laws, or that the same would be a violation of the Fourteenth Amendment to the Constitution of the United States; but admit the jurisdiction of this Honorable Court.

XXXI.

With reference to paragraph XXXI of said bill, the defendants deny that the plaintiffs are remediless at common law or that they are relievable only in a court of equity as therein alleged.

FIRST AFFIRMATIVE DEFENSE.

And for a first further and affirmative defense to the cause of action set forth in the plaintiffs' bill of complaint herein, the defendants allege:

I.

That the true and fair value in money of timber and timbered lands is dependent, among other factors, upon the character and quality or grade of timber, the thickness of the stand of timber or quantity per acre or upon a given tract, the topography of the ground upon which the timber stands, the presence of water for use in camps, logging engines and locomotives, the probability of fires, the size and contiguity of the tracts of land, large or contiguous tracts constituting practically solid bodies of land containing sufficiently large quantities of timber to constitute the same profitable logging enterprises being commercially more valuable per acre or per M feet of timber than smaller or isolated tracts not sufficient in size to warrant the construction of roads, railroads, camps and other facilities necessary to the removal of the timber.

The lands of the plaintiffs, referred to in their bill of complaint herein, consist of such large and practically solid bodies, bearing timber of valuable character, of exceptionally high grade and of thick and heavy stand, and constitute desirable, advantageous and profitable logging enterprises from an operating standpoint, making the same proportionally more valuable than smaller or isolated tracts of timbered lands in the same localities, or otherwise similar in character to the lands of the plaintiffs.

II.

That on or about the year 1908, the assessing officers of Clallam County caused to be employed experienced, capable and competent timber cruisers to make, and who did make, full, complete and detailed cruises and estimates of the character, quality and quantity of the timber standing upon the various legal subdivisions of land in said county. All of the timbered lands in said county in private ownership, including the lands of the plaintiffs, have now been so cruised and platted into tracts or zones, and detailed reports and estimates of such cruises made and filed in the office of the County Assessor of said county respecting the same. These reports, estimates and

plats, taking into due consideration the factors of value hereinabove set forth, and also the availability, ease or difficulty of logging, and physical characteristics of the lands, together with such other information with reference to agricultural possibilities of the lands, the presence of mineral deposits and other similar factors of value as the assessing officers were able to obtain upon independent investigation, were, and have been consulted and used by such officers to assist in ascertaining and determining the values of said lands for the purposes of assessment and taxation, and such facts, plats, estimates, reports, data and other information, with due attention to geographical location, availability, physical characteristics of the ground, and other elements influencing the value of timber and timbered lands, as hereinbefore set forth, were carefully considered by such officers in making the assessments referred to in the plaintiffs' bill of complaint herein.

The assessments thus made, as hereinabove and hereinafter referred to, were not arbitrary, capricious, unlawful, unreasonable, inequitable, disproportionate, or the result of any combination or conspiracy whatsoever, as alleged in the plaintiffs' bill of complaint herein, or at all, but were the result of the honest, sincere, conscientious, mature and deliberate judgment and belief of the assessing officers and equalizing officers of said county formed upon and after full and careful investigation of all the facts and circumstances surrounding said lands and affecting their values, as hereinabove set forth, and a full, free and fair hearing as required by law.

III.

That by the laws of the State of Washington in force and effect at the time the assessment for the years 1912, 1913 and 1914 complained of in plaintiffs' said bill of complaint herein were made, and prior thereto, as hereinafter set forth, it was and is provided:

(Laws of 1897, Chapter LXXX.)

Para. 1. That all real and personal property now

existing, or that shall be hereafter created or brought into this state shall be subject to assessment and taxation upon equalized valuations thereof, fixed with reference thereto on the first day of March at twelve o'clock meridian, in each and every year in which the same shall be listed, and

Para. 2. That real property for the purposes of taxation, shall be construed to be the land itself, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property, for the purposes of taxation, and

Para. 3. That all real property in this state subject to taxation shall be listed and assessed under the provisions of this act in the year 1900 and biennially thereafter on every even numbered year with reference to its value on the first day of March preceding the assessment, and that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list and in each odd numbered year the valuation of each tract for taxation shall be the same as the valuation thereof as equalized by the county board of equalization in the preceding year, and

Para. 42. That all property shall be assessed at its true and fair value in money; that the assessor shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made; that in assessing any tract or lot of real property, the value of the land, exclusive of improvements, shall be determined; in valuing any property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash.

IV.

That the assessments of the lands of the plaintiffs, described in their said bill of complaint, based upon

the cruises of timbered lands in said county, as herein set forth, began and were made in the year 1910, and were used and consulted and adopted in 1911 and 1912, and have continued ever since; that the plaintiffs, as alleged in their bill of complaint herein, paid without protest, all of the taxes levied upon its said lands for the years 1910, 1911 and 1912.

V.

That the methods and bases upon which, and the laws of the State of Washington under which, the assessments of timbered lands in Clallam County, including the lands of the plaintiffs, have been made since the year 1910, have at all times since that date, been known to and acquiesced in by the plaintiffs.

VI.

That under the laws of the State of Washington, all taxes for State, County, Municipal and other purposes, are levied in specific sums and charged directly to the respective counties of said state; the rate per centum necessary to raise the taxes so levied in dollars and cents is computed and ascertained by the County Assessor of each county; that after taxes are thus levied, neither the county nor the property therein can be relieved of the duty of the payment of such taxes to be paid by any property owner or tax payer, or to a failure to collect taxes for any reason, are by the laws of said State, required to be added to, made up and collected under future assessments and levies, all of which is known to the plaintiffs.

That the lands of the plaintiffs, as admitted by the allegations of their bill of complaint herein, are not assessed or taxed at any greater or higher value or rate than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiffs, and upon which the taxes and assessments have been paid by the owners thereof.

That under the laws of the State of Washington, county boards and officials are prohibited from and are without authority to remit or grant refunds of taxes paid, all of which is known to the plaintiffs herein; that plaintiffs neglected and delayed to take proper or

any steps or to bring any suit or other proceeding to correct the alleged inequitable assessments referred to in their said bill of complaint herein, until after the larger portion of the taxes levied upon other lands similar in character and similarly located to the lands of the plaintiffs had been paid, and if relief as prayed for in the plaintiffs' said bill of complaint is granted, other owners of property similar in character and similarly situated to the lands of the plaintiffs in said county, will have been for the year 1914, and in the future will be, compelled to pay an unjust and unfair proportion of the taxes levied upon property in said county.

VII.

That by reason of the premises, and the facts and circumstances hereinabove recited, the plaintiffs have been and are guilty of laches, and are precluded and estopped to question or deny the legality, fairness or correctness of the assessment and levy of taxes upon its said lands for the year 1914, and it cannot, in equity or good conscience, now be heard to complain thereof.

SECOND AFFIRMATIVE DEFENSE.

AND for a second and further affirmative defense to the cause of action set forth in the plaintiffs' bill of complaint herein, the defendants allege:

I.

That they hereby refer to paragraphs I, II, III and IV of their first and further affirmative defense hereinabove set forth, and by such reference adopt the same and make them a part of this second affirmative defense.

II.

That Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington is unconstitutional, inoperative and void.

WHEREFORE, having fully answered the said bill of complaint herein, the defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for such

other and further relief as to the Court shall seem meet, just and equitable.

CLALLAM COUNTY,
as Treasurer of said county.
HERBERT H. WOOD,
Defendants.
By J. E. FROST,
Their Attorney.

SANFORD C. ROSE,
J. E. FROST,
JONES & RIDDELL,
EDWIN C. EWING,
Attorneys for Defendants.

Office and Post Office Address:
627 Colman Bldg., Seattle, Wash.

Indorsed: Answer to Bill of Complaint. Filed
May 3, 1915.

No. 57

STIPULATION REGARDING TRANSCRIPT OF
PLEADINGS IN RECORD ON APPEAL

It is stipulated by and between the plaintiffs, appellants, and the defendants, appellees herein, at the instance and request of the plaintiffs, in order to save unnecessary expense of useless repetition in making up the record for appeal herein, as follows, to-wit:

That after the close of the evidence and at the time of argument of this cause the defendants, over the objection of the plaintiffs, under circumstances set forth in the statement of facts herein, were allowed to amend their answer in certain particulars, as defendants contended, to correspond to the evidence in the case, and thereafter, on to-wit the 3d day of February, 1916, defendants served upon the plaintiffs and filed herein their amended answer, with reference to which it is here and now stipulated that said amended answer is the same in all respects as the answer filed herein on the 3d day of May, 1915, save only in the following respects, to-wit:

(A) Paragraph IX was amended to read as follows, to-wit:

“With reference to paragraph IX of said bill, the defendants admit the practice by assessors and taxing boards of the custom therein referred to, and admit the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1914, he assessed taxable property within Clallam County upon the basis of fifty per cent of its true and fair value in money; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph; deny that the interior timber lands in said county, including the lands owned by the plaintiffs were and are valued in the year 1914 for the purpose of taxation at sums in excess of fifty per cent of the true and fair value thereof in money; deny that other properties in said county, real and personal, were valued at sums less than fifty per cent of the true and fair value thereof in money; that the plaintiffs were discriminated against grossly and intentionally, or at all, by the assessing officers of Clallam County in the matter of the assessment and taxation of their lands for the year 1914.

(B) Paragraph X was amended to read as follows:

“With reference to paragraph X of said bill, the defendants admit that the timber upon the lands of the plaintiffs, as shown by the cruise made by the county of Clallam, amounts in the aggregate to approximately 715,000,000 feet, the figures set forth therein, and that the assessments upon said lands for the year 1914 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiff was overvalued greatly, or at all, by the assessing officers of said county in the valuations put thereon by them for the purposes of taxation in the year 1914; admit that the valuations placed by the assessing officers of said county upon the lands of the plaintiffs for the purpose of taxation for the year 1914 amount to the

figures therein set forth, to wit \$561,395; deny that the true and fair value in money of said lands does not exceed the sum of \$550,000 and did not exceed that sum in the year 1914; deny that said assessment for the year 1914 was made upon the basis of 102 per cent; that no property in said Clallam County, save the timber lands owned by the plaintiffs and certain other timber lands similarly situated was assessed in said year at so great a proportion of its true and fair value in money; deny that the assessment upon the lands of the plaintiffs, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county, as alleged in said paragraph or at all."

(C) Paragraph XII was amended in the following respect:

In the original answer the defendants had admitted "that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said county and with residents of the Middle and West and East Districts of said county in making his assessment rolls, and that such custom was followed in making his assessment rolls for the years 1912, 1913 and 1914; whereas this is now denied in the amended answer.

(D) Paragraph XVII was amended in the following respect:

In the original answer, paragraph XVII thereof the defendants had admitted the charge in plaintiffs' complaint "that upon the Straits of Fuca and immediately adjoining tidewater there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily be logged to the Straits as stated"; whereas in their amended answer, in paragraph XVII they deny that this Straits timber can be readily logged to the Straits.

(E) There is omitted from the amended answer the following matter pleaded in the original answer by the defendants as a Second Affirmative Defense:

I

“That they hereby refer to paragraphs I, II, III and IV of their first and further affirmative defense hereinabove set forth, and by such reference adopt the same and make them a part of this second affirmative defense.

II

That Section 9112 of Volume 3 of Remington & Ballinger’s Annotated Codes and Statutes of Washington is unconstitutional, inoperative and void.”

And with this explanation it is stipulated that defendants’ amended answer need not be set out in this transcript on appeal.

EARLE & STEINERT,
PETERS & POWELL,
Attorneys for Plaintiff.
EDWIN C. EWING,
C. F. RIDDELL,
Attorneys for Defendants.

Indorsed: Stipulation Regarding Transcript of Pleadings in Record on Appeal. Filed Nov. 6, 1916.

No. 57

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT
CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY,

Appellants

vs.

CLALLAM COUNTY, a municipal corporation and
HERBERT H. WOOD, Treasurer,

Appellees

ORDER UPON STIPULATION AS TO RECORD
OF TESTIMONY ON APPEAL

It appearing from the stipulation of appellants and appellees, by their respective counsel, herein filed, that in the District Court of the United States for the Western District of Washington, Northern Division, there were therein pending, heard and determined, four causes, being designated as follows:

Clallam Lumber Company, a corporation, plain-

tiff vs. Clallam County, a municipal corporation and Clifford L. Babcock, Treasurer, being Equity Cause No. 36, and the cause of Clallam Lumber Company, plaintiff vs. Clallam County and Herbert H. Wood, Treasurer, being Equity Cause No. 56; and the cause of Charles H. Ruddock and Timothy H. McCarthy, plaintiffs vs. Clallam County, a municipal corporation and Clifford L. Babcock, Treasurer, being Equity Cause No. 37; and the case wherein Charles H. Ruddock and Timothy H. McCarthy are plaintiffs and Clallam County, a municipal corporation and Herbert H. Wood, Treasurer, are defendants, being Equity Cause No. 57; that said four causes were consolidated for trial and were heard, tried and determined by one and the same judge upon the same testimony, evidence and exhibits, and that there was no other or different evidence in the one case than in the other; and it appearing that there was but one and the same decision of the trial judge handed down in the four cases, and that the plaintiffs in the above four cases are seeking to appeal from the judgment or decree rendered and entered in each of said cases to this honorable court; and it appearing that the transcript of the testimony and evidence in these cases is quite voluminous, covering some 700 pages of printed matter, and that the trial court's memorandum of opinion is quite lengthy; now in order to save unnecessary expense upon appeal, it is here

ORDERED that all four of these cases may be presented, heard and determined on appeal, in so far as the evidence, testimony, depositions and exhibits are concerned, upon the record of such to be transcribed, printed and sent up in the case of Clallam Lumber Company, a corporation, plaintiff against Clallam County, a municipal corporation and Clifford L. Babcock, treasurer, defendants, being Equity Cause No. 36 in the trial court, and that the record of the evidence, testimony, depositions and exhibits, and the trial court's memorandum decision, need not be transcribed, printed or served or sent up to the Circuit Court of Appeals in the other three cases, but may be consid-

ered as incorporated in the record on appeal in each of said causes from the record in Equity Cause No. 36 above named.

DATED at Portland, Oregon, this 12th day of December, 1916.

WM. B. GILBERT,
Judge of the United States Circuit Court of Appeals
for the Ninth Circuit.

We hereby consent to the rendering and entry of the above order.

Dated at Seattle, Washington, December 11, 1916.

J. E. FROST,
C. F. RIDDELL,
EDWIN C. EWING,
Counsel for Appellees.

EARLE & STEINERT,
PETERS & POWELL,
Attorneys for Appellants.

Indorsed: Filed in U. S. District Court Dec. 13, 1916.

No. 57
DECREE

The above entitled cause having come on duly and regularly for trial before the undersigned Judge of the United States District Court, the plaintiffs appearing by their attorneys, F. W. Keeney, Esquire, Messrs. Earle & Steinert and Messrs. Peters & Powell, and the defendants appearing by Mr. Sandford C. Rose, Prosecuting Attorney for Clallam County, and by their attorneys, J. E. Frost, Edwin C. Ewing and Jones & Riddell, and there being at issue and ready for trial three other causes now on file in this court, involving substantially the same issues and requiring substantially the same testimony, and counsel for all parties hereto, with the consent of the Court, having stipulated that all the testimony introduced insofar as applicable should be considered upon the one trial as having been introduced in each of said causes, the said causes being this cause and cause number 37 in this court, between the same parties, and causes numbered 36 and 56 in this court, in which Clallam Lum-

ber Company, a corporation, is plaintiff, and Clallam County and its Treasurer, in his official capacity as such officer, are defendants; and all parties having introduced testimony and rested, and respective counsel having orally argued this cause to the Court, and having submitted their briefs to the Court, and the Court having considered the same and after full consideration of all the facts and the law, being now duly and fully advised in the premises.

It is hereby ORDERED, ADJUDGED AND DECREED that the above entitled cause be and the same hereby is dismissed with prejudice, and that plaintiffs take nothing by this cause.

It is further ORDERED, ADJUDGED AND DECREED that all the taxes levied for the year 1914 upon the real property described in the complaint herein, are in all things legal and valid and are due and owing to Clallam County, a municipal corporation of the State of Washington.

It is further hereby ORDERED, ADJUDGED AND DECREED that the above named defendant Clallam County, a municipal corporation of the State of Washington, do have and recover of and against the above named plaintiffs, Charles H. Ruddock and Timothy H. McCarthy, and each of them, a joint and several judgment for its taxable costs and disbursements herein, which are hereby taxed in the sum of Twenty-one Dollars and Ninety Cents (\$21.90), for which said sum let execution issue.

To the dismissal of this cause, and to each separate paragraph of this decree and to the signing and entry of this decree, the above named plaintiffs except and their exception is hereby allowed by the Court.

Done in open court this 3d day of Feb., 1916.

EDWARD E. CUSHMAN,

District Judge.

Indorsed: Decree. Filed February 3, 1916.

No. 57

ORDER ON EXCEPTIONS TO AMENDED
ANSWER OF THE DEFENDANTS

The defendants upon the conclusion of the evidence in this cause on the 10th day of December, 1915, obtained permission from the Court to amend their answer herein so as to conform to the proofs, which permission was then granted over the objection of the complainant, to which the plaintiffs excepted and said exception was then allowed.

The application of the defendants now made to file herein a formal second amended answer embodying these proposed amendments, is now allowed over the objection of the complainants to which exception is reserved by the complainants and said exception is here and now allowed.

Referring to paragraph IX of said amended pleading complainants except to the amendment which now reads:

“Defendants admit the practice by assessors and taxing boards of the custom therein referred to and admit that the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization.”

whereas in their former answer they had specifically denied these matters.

And referring to line 2 on page 5 in said paragraph IX the defendants now omit the following allegation which appeared in the former answer:

“Or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the year 1914 were made.”

And referring to said paragraph IX, page 5, line 4 thereof, defendants now allege the following:

“Deny that the interior timber lands in said county including the lands owned by the plaintiffs were and are valued in the year 1914 for the purpose of taxation at sums in excess of fifty per cent of the true and fair value thereof in money”;

whereas they previously admitted such matter.

II

And referring to paragraph X of said amended answer the defendants now omit the following allegation, at page 6, line 2, which appeared in the former answer:

“Or upon any other or different basis than the true and fair value in money.”

III

Referring to paragraph XII of said amended pleading, complainants except to the amendment which now reads, at line 22, page 6:

“Deny that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said county, etc.”

whereas in their former answer, they admitted such allegation.

IV

Referring to paragraph XVII, page 10, line 3 thereof, the defendants now allege in said amended pleading:

“But deny that the same can be readily logged to the Straits as stated.”

V

In defendants' former pleading they alleged as a second affirmative defense that Sections 9112 of Volume III of Remington & Ballinger's Codes and Statutes of Washington was unconstitutional, inoperative and void, whereas they now exclude this from their amended pleading.

Complainants' objection is based upon the ground that such amendments are not consistent with the proofs and are wholly inconsistent with the pleading upon which the case was tried, and with the position taken by the defendants throughout the trial.

Complainants' exceptions to each of the amendments to the answer in each of the above particulars, are hereby allowed, such exceptions to be entered as of February 3, 1916.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Exceptions to Amended Answer of Defendants. Filed February 24, 1916.

No. 57

PETITION TO REHEAR AND TO MODIFY
JUDGMENT

Come now the plaintiffs, Charles H. Ruddock and Timothy H. McCarthy, and respectfully pray this court to grant a rehearing herein, in this:

I

The court erred in sustaining the assessment by Clallam County of the hemlock timber and hemlock ties of the plaintiffs in any sum whatsoever, for the reason that it appeared from the evidence in the entire record that this timber and these ties were of no appreciable market value at the dates of the assessment, nor at any time covered by the facts of this case. The court therefore should have struck such assessment of the plaintiffs out, whether the plaintiffs had made a case of fraud upon the entire issue or not, since a court of equity having acquired jurisdiction, on the grounds of fraud, would retain it to do equity to the plaintiffs, even if the plaintiffs failed in sustaining charges of fraud.

Simkins A Federal Equity Suit, p. 27.

Griswold vs. Hilton, 87 Fed. 257.

Waite vs. O'Neill, 34 L. R. A. 550, 76 Fed. 408.

Shainwald vs. Lewis, 69 Fed. 492.

II

The plaintiffs respectfully pray the court to modify the judgment and decree by charging the plaintiffs or the plaintiffs' lands with interest at six per cent per annum from the date of delinquency of taxes, instead of the statutory rate, in view of the plaintiffs' good faith in bringing this suit and in the prosecution of the same, and on the ground of its being an unnecessary hardship to penalize the plaintiffs with so high a rate of interest under the circumstances.

Respectfully submitted,

PETERS & POWELL,

EARLE & STEINERT,

Attorneys for Plaintiffs.

United States of America,
 State of Washington, ss.
 County of King.

Dan Earle being first duly sworn, on oath says: That he is one of the attorneys for the plaintiffs in the above entitled cause and makes this verification on its behalf for the reason that said plaintiffs are not within the Western District of Washington; that he has read the foregoing Petition for Rehearing and to Modify Judgment, knows the contents thereof and believes the same to be true.

DAN EARLE.

Subscribed and sworn to before me this 3rd day of March, 1916.

(Seal)

ROBERT W. REID,

Notary Public in and for the State of Washington, residing at Seattle.

Indorsed: Petition to Rehear and to Modify Judgment. Filed March 3, 1916.

No. 57

HEARING—JOURNAL ENTRY

Now on this day this cause comes on for hearing on motion for rehearing or review, the Plaintiffs being represented by Peters & Powell and D. Earle, and the Defendants represented by C. F. Riddell, and the Court after hearing argument of respective counsel takes the said matter under advisement.

Dated April 18, 1916.

Equity Journal 1—Page.125.

No. 57

MEMORANDUM DECISION ON PETITION FOR
 A RE-HEARING

FILED MAY 11, 1916.

Peters & Powell,
 Earle & Steinert,
 Jones & Riddell,

For Plaintiffs.
 For Defendants.

J. E. Frost,
 E. C. Ewing,
 CUSHMAN, District Judge.

Insofar as the petition for a re-hearing is aimed at the assessment as affected by the hemlock valuation, all that can be said is that certain phases of the evidence—particularly that of some of defendants' witnesses—are more favorable to plaintiffs as to the overvaluation of the hemlock than that covering the valuation of the fir, spruce and cedar; but, after all is said, it is only a question of overvaluation and, in any event, it is not so palpably excessive as to warrant a finding of fraud.

The cases relied upon by the plaintiffs are not cases of overvaluation, but uniformly involve some other controlling element as: fraud; the adoption of a fundamentally wrong principle; an erroneous system; mistake of law or such palpably excessive overvaluation as to impute fraud.

As to the question of interest on the unpaid and untendered taxes, the laws of Washington provide:

"Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin * * * the collection of any taxes * * *, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest, and costs justly due and unpaid from such person or corporation on the property * * *". (Sec. 955 Rem. & Bal. Code.)

"The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of fifteen per cent per annum shall be charged upon such unpaid taxes from the date of

delinquency until paid." (Sec. 9219 Rem. & Bal. Code.)

It may be conceded that this suit was brought in entire good faith; that plaintiffs' only remedy was in equity and not at law and that the fifteen per cent. interest charged upon the taxes is a penalty, yet I find no warrant therein given the court to set aside a statute passed to safeguard the sources of the state's revenues.

Re-hearing denied.

Indorsed: Memorandum Decision on Petition for a Rehearing. Filed May 11, 1916.

No. 57

ORDER DENYING PETITION FOR REHEARING

A petition for rehearing having been filed by the plaintiff in the above entitled cause, briefs having been submitted thereon, and the court having considered the same; and the court having on the 11th day of May, 1916, filed its memorandum decision herein on said petition for rehearing;

Now, therefore, it is hereby ordered that said petition for rehearing be and the same hereby is denied. To the denial of said petition and to the entry of this order plaintiff excepts and exception is hereby allowed.

Done in open Court this 15th day of May, 1916.

EDWARD E. CUSHMAN,

United States District Judge.

Indorsed: Order Denying Petition for Rehearing. Filed May 15, 1916.

In Equity No. 57

ORDER AS TO SETTLEMENT OF STATEMENT OF FACTS

This matter coming on now to be heard before the Hon. E. E. Cushman, Judge, upon the consideration and settlement of the statement of facts herein on appeal, proposed by the plaintiffs, the plaintiffs being present and represented by their counsel, Peters & Powell, and the defendants being present and repre-

sented by their counsel, C. F. Riddell, Esq., and it being now represented to the court by both parties that the statement as proposed by the plaintiffs and lodged by them with the clerk of this court on the 1st day of September, 1916, and the amendments thereto and alterations thereof proposed by the defendants and lodged with the clerk of this court on the 20th day of October, 1916, as now checked and corrected by said parties, constitute a true and complete statement of all of the evidence and testimony introduced upon the trial of the above entitled cause, essential to a decision of the questions presented upon the appeal of said cause, together with all exceptions taken and objections made to the admission or exclusion of evidence, and all motions and rulings thereon made upon said trial, and that same contains all the evidence given or offered upon said trial and all the material matters occurring therein not already a part of the record herein; and it being stipulated by said parties in open court that said statement as so amended may be reduced to printed form and in such form may be approved, signed and certified by this court as a true, complete and properly prepared statement on appeal and may thereupon be filed herein as of this date,

IT IS HERE AND NOW ORDERED that the foregoing disposition of the matter is hereby consented to and made by this court.

Done in open court this 27th day of October, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Order Settling Statement of Facts on Appeal. Filed October 27, 1916.

NO. 57

ASSIGNMENT OF ERROR ON APPEAL

Now on this 27th day of October, 1916, come the plaintiffs, Charles H. Ruddock and Timothy H. McCarthy, by their solicitors, Earle & Steinert and Peters & Powell, and say that the Decree entered in the above entitled cause on the 3d day of February, 1916, is

erroneous and unjust to the plaintiffs, for the following reasons:

I

Because the Court overruled the objection of the plaintiffs to the following question asked by the defendants' counsel on cross examination of the witness, Thomas Aldwell, a witness for the plaintiffs on the value of the Olympic Power Company's plant:

"Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?"

To this plaintiffs objected. The objection was overruled, and the witness answered (Plaintiffs reserving and being allowed an exception):

"I think around Port Angeles they were very optimistic."

"Q. (By defendant's counsel) In other words the general impression was that your dam and power site was a failure up there?"

To this the plaintiffs objected as being incompetent, irrelevant and immaterial. The objection was overruled, an exception taken and allowed by the Court.

To which question the witness answered substantially that the general impression was that the dam would not hold.

II

Because the Court overruled the objection of the plaintiffs to the following question asked by the defendants' counsel on cross examination of the witness Aldwell, a witness for the plaintiffs as to the value of town lots in Port Angeles in March of 1913 and 1914;

The witness was asked whether he was not willing to sell some fifty or sixty thousand dollars worth of Port Angeles property that he had for double its assessed value, to which the plaintiffs objected as incompetent. The objection was overruled and an exception allowed. The witness answered that he would sell the property at double its assessed value.

This holding of the Court was error.

III

Because the Court erred in admitting the testi-

mony of the defendants' witness, C. M. Lauridsen under the following circumstances:

The witness Lauridsen was called by the defendants as an expert upon the value of real estate in Port Angeles and was asked to point out upon a memorandum or tabulation of certain lots what ones he said he would sell on the first of March, 1914, for their assessed value. This was objected to by plaintiffs on the ground that it was incompetent, irrelevant and not evidence of the market value of the property. This objection was overruled by the Court, an exception taken by plaintiffs and allowed by the Court.

The witness answered that the property described was upon the last two sheets of this memorandum or tabulation of lots, being Defendants' Exhibit 29.

IV

Because the Court overruled the objection of the plaintiffs to the following question put by defendants' counsel to their own witness, C. M. Lauridsen, who was being examined as an expert upon the value of real property in the town of Port Angeles:

"Q. That property, according to Mr. Ware's testimony was worth \$6000. on the first of March, 1914. Will you state what you paid for it?"

A. I paid \$2500. on the 13th of March of that same year."

To which ruling the plaintiffs excepted and their exception was allowed by the Court.

V

Because the Court overruled the objection of the plaintiffs to the following question put by the defendants to their witness, C. M. Lauridsen:

"Q. State the facts about the purchase of Lots 18 in Block 54 and Lots 7 and 14 in Block 172".

To which the witness answered:

"Lot 18 in Block 54 I bought in January for \$300. Lot 7 and 14 in Block 172, the witness says he purchased for \$175.

To which ruling the plaintiffs excepted and their exception was allowed by the Court.

VI

Because the Court erred in sustaining the objection of the defendants to the following question put by the plaintiffs to one of the defendants, Clifford L. Babcock:

“Q. Again in section 18 of your answer you say “Deny that the lands and other properties situated at Port Angeles and subject to taxation and valuation upon the assessment rolls as equalized for such years, were valued at not to exceed 10 to 20 per cent. of their true and fair value in money”. Could you state then what you had in mind at that time as the rate at which they were assessed?

To which ruling the plaintiffs excepted and their exception was allowed by the Court.

VII

Because the Court, after the conclusion of all the evidence, permitted the defendants to amend their amended answer, in the following particulars, to wit:

(a) In paragraph IX of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties and particularly Clallam County, of assessing property at from 35 to 50 per cent. of its true value, and had denied the recognition of such custom or practice by the State Board of Equalization.

In said second amended answer they “*Admit* the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the County Assessors and its recognition and acquiescence by the State Board of Equalization” meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent. of its true value.

(b) In their former answer paragraph IX thereof, they had “Denied that the Assessor of Clallam County gives out and pretends that for the year 1914, he assessed taxable property within Clallam County upon the basis of 53 per cent. of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the State of Washington at*

the time the assessment for the years 1913 and 1914 were made".

In their second amended answer, paragraph IX thereof they omit all of that portion above italicized.

(c) In their first amended answer, paragraph IX, the defendants had plead as follows:

"Admit that the interior timber lands in said county including the lands owned by the plaintiffs, were and are valued in the year 1914 for the purposes of taxation, at sums in excess of 53 per cent. of the true and fair value thereof in money."

In their second amended answer, paragraph XIII, they deny this allegation.

To this amendment plaintiffs objected at the time but said objection was overruled and an exception allowed by the Court.

VIII

Because the Court allowed the defendants, over the objection of the plaintiffs then made at the conclusion of the evidence, to amend their answer in the following particulars:

(a) In their first amended answer defendants had alleged in paragraph X thereof the following:

"Deny that said assessment for the year 1914 was made upon the basis of 102 per cent *or upon any other or different basis than the true and fair value in money of all property assessed.*"

Whereas the second amended answer contains the same denial omitting however the words above italicized.

Plaintiffs reserved an exception to this amendment at the time, which was allowed by the Court.

(b) In their first amended answer, in paragraph XVII thereof, the defendants had alleged "That in the zones abutting upon the Straits of Fuca there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily be logged to the Straits as stated", while in their second amended answer they deny that said timber can readily be logged to the Straits as stated.

To this amendment and to the allowance thereof

the plaintiffs at the time reserved an exception, which was allowed by the Court.

IX

Because the Court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiffs described in the complaint, being to wit, in the sum of \$14095.67 (or in any sum in excess of \$6905.00) were legal and valid.

X

The Court erred in adjudging and decreeing the bill of the Plaintiffs dismissed and a judgment against the plaintiffs for costs.

XI

Because the Court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiffs' lands set forth in their bill, was not in excess of \$6905. and that the plaintiffs had tendered this amount, and that the County of Clallam and the Treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1914 and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

XII

Because the Court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1914 against the lands of the plaintiffs, in the sum of \$14095.67 were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

XIII

Because the Court erred in refusing to readjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$6905. tendered by the plaintiffs, and to cancel from said lands the balance of said taxes.

XIV

Because the Court erred, under the evidence, in

failing to eliminate the assessments on hemlock timber, ties and poles and in failing to cut down the amount of the tax levy as provided in the decree by at least the sum of \$892.79.

XV

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

XVI

Because the Court erred in entering judgment that the plaintiffs take nothing by this action and that the defendants go hence without day and recover their costs.

XVII

Because the Court erred in not entering judgment for the plaintiffs and against the defendants in accordance with the prayer of the complaint.

XVIII

Because the evidence showed that the plaintiffs' lands set out in the bill of complaint were assessed by Clallam County for the year 1914 taxes in the sum of \$14095., whereas the just and fair assessment of such lands did not exceed the sum of \$6905.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiffs and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

Wherefore plaintiffs pray that such judgment be reversed and that this Honorable Court will direct the entry of a judgment or decree in accordance with the prayer of plaintiff's complaint.

EARLE & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiffs.

Indorsed: Assignments of Error on Appeal.
Filed October 27, 1916.

No. 57

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF WASHINGTON, NORTHERN
DIVISION

CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY,

Plaintiffs,

vs.

CLALLAM COUNTY, a municipal corporation and
HERBERT H. WOOD, Treasurer,

Defendants.

IN EQUITY

No. 57

PETITION FOR APPEAL

Filed Oct. 27, 1916, in the District Court of the
United States for the Western District of Washington,
Northern Division.

TO THE HONORABLE EDWARD E. CUSH-
MAN, DISTRICT JUDGE:

The above named plaintiffs, feeling themselves
aggrieved by the decree made and entered in this cause,
on the 3rd day of February, 1916, and, after motion
for re-hearing, upon the 16th day of May, 1916, do
hereby appeal from said decree to the Circuit Court
of Appeals for the Ninth Circuit, for the reasons spec-
ified in the Assignments of Errors, which is filed here-
with, and pray that their appeal be allowed and that
citation issue as provided by law, and that a transcript
of the record, proceedings and papers upon which said
decree was based, duly authenticated, may be sent to
the United States Circuit Court of Appeals for the
Ninth Circuit, sitting at San Francisco, and your
petitioners further pray that the proper order touch-
ing the security to be required of them to perfect their
appeal may be made.

EARLE & STEINERT,
PETERS & POWELL,

Solicitors.

The petition granted and the appeal allowed upon

giving bond conditioned as required by law in the sum of Five Hundred Dollars.

EDWARD E. CUSHMAN,
Judge of said Court sitting in the Northern Division.

Dated at Seattle Oct. 27, 1916.

Indorsed: Petition for Appeal. Filed Oct. 27, 1916.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION
CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,

Plaintiffs,

vs.

CLALLAM COUNTY, a municipal corporation and
HERBERT H. WOOD, Treasurer,

Defendants.

IN EQUITY

No. 57

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, Charles H. Ruddock and Timothy H. McCarthy, as principals, and Massachusetts Bonding and Insurance Company, as surety, acknowledge ourselves to be jointly indebted to the county of Clallam and Herbert H. Wood, treasurer, appellees in the above entitled cause, in the sum of Five hundred (\$500.00) Dollars, conditioned that,

Whereas, on the 3rd day of February, 1916, and, after petition for re-hearing thereon, on the 16th day of May, 1916, in the District court of the United States for the Western district of Washington, in a suit depending in that court, wherein Charles H. Ruddock and Timothy H. McCarthy were plaintiffs and Clallam county and Herbert H. Wood were defendants, numbered on the Equity docket as 57, a decree was rendered against the said Charles H. Ruddock and Timothy H. McCarthy, and the said Charles H. Ruddock and Timothy H. McCarthy, having obtained an appeal to the Circuit Court of Appeals

of the United States for the Ninth Circuit, and filed a copy thereof in the office of the clerk of court, to reverse the said decree, and citation directed to the said county of Clallam, and to the said Herbert H. Wood, treasurer, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the 26th day of November, 1916, next.

Now, if the said Charles H. Ruddock and Timothy H. McCarthy shall prosecute their appeal to effect and shall answer all costs, if they fail to make their appeal good, then the obligation to be void, else to remain in full force and virtue.

CHARLES H. RUDDOCK,
By W. A. Peters, his attorney.

TIMOTHY H. McCARTHY,
By W. A. Peters, his attorney.

MASSACHUSETTS BONDING
AND INSURANCE COMPANY,

(SEAL) By Fredk. B. Potwin, Its Attorney in
Fact.

Approved Oct. 27, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Bond on Appeal. Filed October 27,
1916.

NO. 57

ORDER AS TO EXHIBITS

It appearing in the opinion of the Judge presiding in the United States District Court for the Western District of Washington, Northern Division, necessary and proper that the original exhibits offered and received in evidence or filed in said cause on trial thereof, should be inspected in the above entitled Court upon appeal;

It is ordered that said original exhibits be retained for safe keeping, by the Clerk of said District Court, to be by him transmitted under his hand and seal of said District Court to the Clerk of the above entitled

Court at San Francisco, California, as a supplemental record herein upon appeal.

Dated at Seattle, Washington, October 27, 1916.

EDWARD E. CUSHMAN,

Judge of the United States District Court, Western District of Washington, sitting in the Northern Division.

Indorsed: Order as to Exhibits. Filed October 27, 1916.

No. 57

ORDER EXTENDING TIME TO DOCKET
CAUSE ON APPEAL

Now on this 2d day of November, 1916, the above entitled cause came on to be heard upon the motion of the plaintiffs and appellants for an order extending the time in which to docket this case and to file the record thereof with the Clerk of the Circuit Court of Appeals for the Ninth Circuit, upon the ground that the same is necessary by reason of the great bulk of the record to be transcribed or printed herein, and the court upon hearing said motion and being fully advised in the premises, and considering that good cause has been shown for granting the same, and being the Judge who signed the Citation on appeal herein;

IT IS ORDERED That the time within which said appellants shall docket said cause on appeal and the return day named in the Citation issued by this Court, be enlarged to and including the 1st day of January, 1917.

EDWARD E. CUSHMAN, Judge.

Service of the foregoing Order and receipt of a copy thereof admitted this 2d day of November, 1916.

S. C. ROSE,

C. F. RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Order Extending Time to Docket Cause on Appeal. Filed November 2, 1916.

No. 57

STIPULATION AND ORDER AS TO RECORD

It is hereby stipulated by and between the parties

plaintiff and defendant through their respective counsel, that in preparing the transcript and record on appeal all captions, except the name of the paper and number of the cause, except where specially noted in the Praecipe for record on appeal, and all verifications, all certificates of notaries public or other officers or officials to all depositions taken and also the stipulation with reference to taking the depositions, may be omitted, and that all indorsements except to show the name of the paper and date of filing, and all acceptances of service of papers, may be omitted.

PETERS & POWELL,
Attorneys for Plaintiff.

S. C. ROSE,
C. F. RIDDELL,
Attorneys for Defendants.

On reading the foregoing Stipulation as to the record on appeal in this cause it is ordered that said record may be so prepared and filed.

Dated at Seattle, Washington, this 2d day of November, 1916.

EDWARD E. CUSHMAN,
Judge of the above entitled Court.

Indorsed: Stipulation and Order as to Record.
Filed November 2, 1916.

NO. 57

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,

Plaintiffs

vs.

CLALLAM COUNTY, a municipal corporation and HERBERT H. WOOD, Treasurer,

Defendants.

No. 57

PRAECIPE

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare a record on appeal in the above entitled cause, consisting of the following:

(1) Caption exhibiting the proper style of court and title of the case; a statement showing the time of commencement of the case; names of the parties; the several dates when the respective pleadings were filed; the time when the trial was had; the name of the judge hearing same; dates of entry of the decree; of plaintiffs' petition for rehearing; of argument on petition to rehear and of the court's taking same under advisement; of the entry of final order denying petition to rehear; of filing petition for appeal; of allowance of petition by the court and the filing of assignment of errors.

(2) Plaintiffs Complaint, filed March 8, 1915.

(3) Defendants' motion to dismiss plaintiffs' bill of complained, filed March —, 1915.

(4) Order denying defendants' motion to dismiss complaint filed March 29, 1915.

(5) Defendants' answer filed May 3, 1915.

(6) Statement of testimony as approved by the court and filed in said cause.

(7) Stipulation with reference to transcribing pleadings and amended pleadings in this record.

(8) The following depositions taken and filed in this cause on the — day of ————1915, to wit:

Testimony of R. W. Schumacher and J. P. Christensen.

Testimony of J. A. Adams.

The following portions of the testimony of William Garlick: Page 27, lines 6 to 22 inclusive; page 50 line 25 to line 2 on page 51; page 52 lines 3 to 18 inclusive; page 57 lines 21 to 30 inclusive. All cross-examination, re-direct examination and re-cross examination of the witness Garlick.

Testimony of Charles F. Seal, page 66, lines 6 to 13 both inclusive.

(9) The following exhibits in the case:

Plaintiff's Exhibit P, being a letter from Christensen to Grasty dated April 29, 1914.

Plaintiffs' Exhibit L, being letter of J. C. Hansen to Grasty.

Plaintiffs' Exhibit M, letter of Clifford L. Babcock to Grasty.

Plaintiffs' Exhibit N, letter from Lewis Levy to Grasty.

Plaintiffs' Exhibit F, letter from Thomas Aldwell to Grasty dated April 29, 1914.

Plaintiffs' Exhibit E, being photographed list of appraisal of properties by Thomas Aldwell.

Plaintiffs' Exhibit FF. Statement showing assessment of shingle mills in Clallam County.

Plaintiffs' Exhibit T. Assessment of Olympic Power Company's property.

Plaintiffs' Exhibit CC. Written statement from Henry to Grasty.

(10) Statement as to assessment of banks, filed Dec. 11, 1916 in Cause No. 36.

(12) Memo decision filed January 22, 1916.

(13) Decree rendered and entered February 3, 1916.

(14) Plaintiffs' exceptions to allowance of amendment of defendants' answer and order allowing amendments filed February 3, 1916.

(15) Plaintiffs' petition to rehear and modify judgment filed March 3, 1916.

(16) Journal entry showing hearing on petition to rehear entered April 18, 1916.

(17) Memo decision upon petition to rehear, filed May 11, 1916.

(18) Order denying petition to rehear, filed May 15, 1916.

(19) Plaintiffs' notice to defendants of the lodgment of statement of facts, filed September 1, 1916.

(20) Plaintiffs' assignment of errors, filed Oct. 27, 1916.

(21) Plaintiffs' petition for appeal and order allowing same.

(22) Bond on Appeal and approval thereof.

(23) Citation on appeal and admission of service thereof by defendants.

(24) Order of court to send up original exhibits. (All the above, 21, 22, 23 and 24, filed Oct. 27, 1916.)

(25) Journal entry showing adjournment of term of District Court immediately preceding term commencing first Tuesday in May, 1916.

(26) Order of court upon stipulation of parties with respect to settlement of statement of facts filed Oct. 27, 1916.

(27) This praecipe with admission of service thereon by defendants.

(28) Index to all of the above.

Dated at Seattle, Washington, this 30th day of October, 1916.

EARLE & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiffs, Appellants.

Indorsed: Praecipe for Transcript on Appeal.
Filed October 31, 1916.

No. 57

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION
CHARLES H. RUDDOCK and TIMOTHY H. McCARTHY,

Plaintiffs. Appellants.

vs.

CLALLAM COUNTY, a municipal corporation, and HERBERT H. WOOD, Treasurer,

Defendants. Appellees.

UNITED STATES OF AMERICA to CLALLAM COUNTY, a municipal corporation, and HERBERT H. WOOD, Treasurer.

CITATION

A GREETING:

You and each of you are hereby notified that in a certain suit in the United States District Court for the Western District of Washington, Northern Division, wherein Charles H. Ruddock and Timothy H. McCarthy are plaintiffs and Clallam County and Herbert H. Wood, Treasurer, are defendants, an ap-

peal has been allowed the plaintiffs therein to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, State of California, thirty days after the date of this Citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable E. E. Cushman, Judge of the United States District Court for the Western District of Washington sitting in the Northern Division, this 27th day of October, 1916.

EDWARD E. CUSHMAN,
United States District Judge for the Western District
of Washington sitting in the Northern Division.

Received a copy of the above and foregoing Citation this 27th day of October, 1916.

SANFORD C. ROSE,
DEVILLO LEWIS,
J. E. FROST,
E. C. EWING,
R. S. JONES,
C. F. RIDDELL,

Attorneys for above named Appellees.

Indorsed: No. 57. In the District Court of the United States, Western District of Washington, Northern Division. Charles H. Ruddock and Timothy H. McCarthy, Plaintiffs, vs. Clallam County, et al., Defendants. CITATION. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1916, Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION
CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY,

Plaintiffs,

vs.

CLALLAM COUNTY, a municipal corporation, and
HERBERT H. WOOD, Treasurer,

Defendants.

IN EQUITY—No. 57

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
UNITED STATES OF AMERICA
WESTERN DISTRICT OF WASHINGTON—SS.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 80 printed pages numbered from 1 to 70, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellants for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.), for making
record, certificate or return, 323 folios at
15c\$ 48.45

Certificate of Clerk to transcript of record—4 folios at 15c.....	.60
Seal to said Certificate.....	.20
Statement of cost of printing said transcript of record, collected and paid.....	79.55
	<hr/>
Total	\$128.80

I hereby certify that the above cost for preparing, certifying and printing record amounting to \$128.80 has been paid to me by counsel for complainants.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause, and under separate cover Stipulation to submit this cause on the Evidence Printed in the Record of Equity Cause No. 36 on appeal to this same term.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 27th day of December, 1916.

FRANK L. CROSBY,
Clerk United States District Court.

(SEAL)